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SUPREME COURT OF THE UNITED STATES.

No. ~~455~~ 218

HOLDANE AND COMPANY AND JAMES JEFFRIES, APPELLANTS,

vs.

R. B. SUMNER, FRANCIS VALETTE, JOHN HUGHES, JOSEPHINE VALETTE HUGHES, AND THE BANK OF AMERICA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 Circuit court of the United States, fifth circuit and district of Louisiana.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. & ALS.
No. 5177.

Bill of complaint.—Filed February 23rd, 1867.

To the honorable the judges of the United States circuit court for the district of Louisiana:

Richard B. Sumner, Francis Valette, John Hughes and his wife Josephine Valette Hughes, formerly Widow Thomas, all of whom are citizens of the State of Louisiana, bring this their bill of complaint against James Jeffries, a citizen of the State of Pennsylvania, and John
2 H. Holdane and James H. Holdane, citizens of the State of New York, and trading and doing business in that State, under the name and style of Holdane & Co., and the Bank of America, a corporation established in the city of New Orleans, and chartered according to the laws of the State of Louisiana. And your orators complain and say, that on the 12th day of June, 1856, by authentic act, passed before Richard Brenan, a notary of the parish of Orleans, they, your oratrix, Josephine Valette Hughes, being the widow of Mark Thomas, deceased, leased unto Ferdinand William Charles Cook and Bernard Fallon, a certain property known as the Belleville Iron-Works, situate in the parish of Orleans, on the right bank of the Mississippi River, including large and extensive buildings, the yard in the rear and certain machinery then on the property leased, and a certain right of way to the water-line of the river from said premises, for the term of ten years, beginning on the first of January, 1856, and to determine and end on the 31st day of December, 1865, the said lessees to pay a certain per-
3 centage on the gross amount of the value of work done in the premises as rent therefor, which percentage the said lessees guaranteed should amount to seven thousand dollars per annum. It was further stipulated and agreed between the said lessors and lessees that notes should be given in advance, at the beginning of each year during the continuance of the lease, for the estimated percentage, to be paid as rent, to represent the quarterly rent calculated as aforesaid, and so as to make the rent payable quarterly, and the said lessors also by the said act leased for the same term to the lessees the exclusive use of one hundred and forty feet of the river-line, convenient to the said Bellville Iron-Works for the rent of five hundred dollars per annum, payable at the end of each year; all of which will more fully and at large appear by reference to a duly certified copy of said act of lease, hereunto annexed for greater certainty.

Your orators further show, that by authentic act, passed be-
4 fore the said Richard Brenan, notary, on the 1st day of April, 1857, the said Cook and Fallon transferred all their rights and obligations under the said act of lease, of date the 12th of June, 1856, to the Belleville Iron-Works Company, a corporation domiciliated in the parish of Orleans, State of Louisiana, which corporation assumed the rent stipulated to be paid by the said Cook and Fallon and all other obligations resting upon them, by virtue of said act of lease. The lessors assented to said transfer, and accepted the Belleville Iron-Works Company as their lessees, all of which will more fully appear by refer-

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SUMNER, HUGHES, & VALETTE
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HOLDANE & CO. & ALS.
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To the honorable the judges of the United States circuit court for the district of Louisiana:

Richard B. Sumner, Francis Valette, John Hughes and his wife Josephine Valette Hughes, formerly Widow Thomas, all of whom are citizens of the State of Louisiana, bring this their bill of complaint against James Jeffries, a citizen of the State of Pennsylvania, and John
2 H. Holdane and James H. Holdane, citizens of the State of New York, and trading and doing business in that State, under the name and style of Holdane & Co., and the Bank of America, a corporation established in the city of New Orleans, and chartered according to the laws of the State of Louisiana. And your orators complain and say, that on the 12th day of June, 1856, by authentic act, passed before Richard Brenan, a notary of the parish of Orleans, they, your oratrix, Josephine Valette Hughes, being the widow of Mark Thomas, deceased, leased unto Ferdinand William Charles Cook and Bernard Fallon, a certain property known as the Belleville Iron-Works, situate in the parish of Orleans, on the right bank of the Mississippi River, including large and extensive buildings, the yard in the rear and certain machinery then on the property leased, and a certain right of way to the water-line of the river from said premises, for the term of ten years, beginning on the first of January, 1856, and to determine and end on the 31st day of December, 1865, the said lessees to pay a certain per-
3 centage on the gross amount of the value of work done in the premises as rent therefor, which percentage the said lessees guaranteed should amount to seven thousand dollars per annum. It was further stipulated and agreed between the said lessors and lessees that notes should be given in advance, at the beginning of each year during the continuance of the lease, for the estimated percentage, to be paid as rent, to represent the quarterly rent calculated as aforesaid, and so as to make the rent payable quarterly, and the said lessors also by the said act leased for the same term to the lessees the exclusive use of one hundred and forty feet of the river-line, convenient to the said Bellville Iron-Works for the rent of five hundred dollars per annum, payable at the end of each year; all of which will more fully and at large appear by reference to a duly certified copy of said act of lease, hereunto annexed for greater certainty.

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ence to a duly certified copy of said act of transfer, hereto annexed for greater certainty.

Your orators further show, that the said Belleville Iron-Works Company having become insolvent on the 29th of December, 1858, by petition filed in the fourth district court of New Orleans, made a cession of their property and effects to their creditors, and prayed the benefit
5 of the insolvent laws of the State of Louisiana. On the same day the cession was accepted by the judge of that court for the benefit of the creditors, and a meeting of the creditors was ordered according to the usual course of proceedings in such cases. In the month of February, 1859, Richard Wells was appointed and qualified as syndic of the creditors of said insolvent corporation, and entered upon the discharge of his duties under the authority of the said honorable court, as will appear by a duly certified transcript of said cause, entitled the "Belleville Iron-Works Company vs. Their Credilors, No. 12890 on the docket of said court, which will be filed and exhibited in this cause whenever required.

Your orators further show that, upon application of the said syndic, the effects and movables on the said premises leased were sold, at public auction, by the sheriff of the parish of Orleans, under the orders of the said fourth district court of New Orleans, and netted something above
6 the sum of forty-seven thousand dollars, the precise amount not now known to your orators; that, on the 23d of May, 1859, a provisional tableau of distribution was filed by the said syndic in the said fourth district court of New Orleans, by which, after defraying certain law charges and expenses, allowed a prior rank to the lessor's privilege existing in favor of your orators, and the balance of the proceeds of the said effects and movables, found on said leased premises, was allowed and awarded to your orators on account of the rent of said premises, by way of privilege and lien as lessor; that the sum of $11,867, on deposit in the Bank of America to the credit of Richard Wells, syndic, sought to be subjected to the payment of their several judgments against the said Belleville Iron-Works by the said Holdane & Co., in this honorable court, on the law side, and by Ja's Jeffries, in the fourth district court of New Orleans, by garnishment and other proceedings in execution, is a part of the proceeds of the movables and effects found
7 on said premises leased and sold by the sheriff of the parish of Orleans as aforesaid; that the said proceeds were allowed by the provisional tableaux to your orators; that the said tableau was, on the 4th of June, 1859, homologated so far as not opposed, and, although some oppositions were filed by the said Holdane & Co., among others, the same were soon dismissed, and the said judgment of homologation became final and absolute, and is a conclusive judgment, having the force of res adjudicata against the said Belleville Iron-Works Co., and in favor of your orators and against all persons parties thereto; that the said effects and movables, of the proceeds of which the said sum of $11,867.07 in the Bank of America to the credit of the said Wells, syndic, forms part, never left the premises until sold by the sheriff as aforesaid, and the said balance passed into the hands of the officers of the said 4th district court of New Orleans, and has there remained to the present time in the custody of th law, and belongs to your
8 orators by virtue of their privilege as lessors, and the orders and judgment of the said fourth district court in the said cause No. 12890 of the docket of the fourth district court of New Orleans.

Your orators further show that there is due them for rent of the said premises under said lease the sum of thirty-three thousand two hundred

and ten dollars, thirty-two hundred and ten dollars being balance due for the year 1861, and seven thousand five hundred dollars per annum for the years 1862, 1863, 1864, and 1865.

Your orators further show that, on the 30th of January, 1863, the said Richard Wells, syndic, in pursuance of the orders and decrees of the fourth district court of New Orleans, and in recognition of your orators' rights, by reason of said judgment and decrees and their privilege as lessors, drew a check on the Bank of America for the sum of $11,867.07
and interest, as agreed between him and said bank, of three per
9 cent. per annum, being the balance of the proceeds of said movables and effects, affected with your orators' privilege as lessors, on deposit in said bank to the credit of said Richard Wells as syndic, said check being drawn in favor of your orator, Richard B. Sumner, and handed him by said syndic for himself and co-lessors whom he represented.

Your orators further show that, on the 5th day of May, 1863, your orators caused the said check to be presented for payment at the office of the said Bank of America, which was refused payment by the officers of said bank, on the ground that the fund drawn upon had been garnisheed, meaning, as your orators are advised, by the said defendants Holdane & Co. and Jas. Jeffries, whereupon the said check was protested for non-payment; all of which will more fully appear by reference to said check and the protest thereof, hereto annexed for greater certainty.

Your orators further show that, notwithstanding their clear
10 and undoubted right to the said sum of $11,867.07, in the Bank of America to the credit of the said Wells, syndic, the said defendants, Holdane & Co. and James Jeffries are seeking to subject and appropriate the same to the payment of judgments obtained against the said Belleville Iron-Works Co., by proceedings of garnishment and other proceedings in execution. The said defendants, Holdane & Co., having obtained judgments in two suits instituted by themselves against the said Belleville Iron-Works Co., No. 3049 & 3090 on the docket of the law side of this honorable court, have garnisheed the Bank of America, and made a motion against the said bank in their said suits to compel the said bank to pay them over the said fund in said bank to the credit of the said Richard Wells, syndic, and the said James Jeffries having obtained judgments in three several suits by him
instituted in the fourth district court of New Orleans against the
11 said Belleville Iron-Works Co., No. 3326, 12851, and 12939, on the docket of said court, have also garnisheed said Bank of America, and have endeavored by means of garnishment, and also by an intervention in the two causes on the law side of this honorable court, entitled Holdane & Co. vs. the Belleville Iron-Works Co., No. 3049 & 3090, on the docket, to subject the said fund in the Bank of America to the payment of his judgments against the said Belleville Iron-Works Company. And thus the said defendants, Holdane and Company, and James Jeffries, are endeavoring by legal proceedings in this honorable court, to appropriate to themselves, in disregard of your orators' rights, the said fund in the Bank of America, viz, $11,867.07, and the interest thereupon; all of which will more fully appear by reference to the records of said causes, No. 3049 & 3090 on the docket of this honorable court, on the law side; all of which proceedings and doings by the said defendants, Holdane & Co. and James Jeffries, are contrary to
12 equity and good conscience, and tend to the manifest wrong and oppression of your orators.

In consideration whereof, and inasmuch as your orators can only have adequate relief in the premises in a court of chancery, where matters of this nature are properly cognisable and relievable: To the end, therefore, that the said defendants, Holdane & Co., James Jeffreys, and the Bank of America, full, true, and perfect answer may make to the several matters herein alleged, your orators, however, waiving their answers under oath, pray that a writ of subpœna may issue to the said defendants and each of them, requiring them within a certain time to be therein limited, to make answer unto this bill of complaint, and to abide by and perform such order, direction, and decree as your honor may make in the premises; that in consideration of the matters herein alleged and set forth, and the affidavit hereunto annexed, and such bond as your honor may direct to be given, that your honor would
13 grant a writ of injunction, directed to the said Holdane & Co. and James Jeffreys, to enjoin and restrain them, and each of them, their attorneys and agents, from proceeding by way of garnishment or other legal process or motion, auxiliary to such process, to collect and demand from the Bank of America the said fund in said bank to the credit of said Richard Wells, syndic, and from making any claim or pretension thereto, and that finally it be decreed that the Bank of America pay over said fund to your orators, and for costs of suit, and such further aid, relief, and remedy as to your honor may seem meet and proper, and the nature of the case may require.

(Signed) BRADFORD, LEA & FINNEY,
Of Counsel.

It is agreed by the solicitors of the several parties that the foregoing shall be filed and used in lieu of the original bill, which has been lost or mislaid.

(Signed) ROB'T MOTT, *For Holdane & Co.*
" L. E. SIMONDS, *For Jeffries.*

14 *Lease from Josephine Valette Hughes unto Ferdinand William Charles Cook and Bernard Fallon, referred to in foregoing bill.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that, on this twentieth day of June, in the year of our Lord one thousand eight hundred and fifty-six, before me, Richard Brennan, a notary public in and for the parish of Orleans and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally appeared Richard Bartlett Sumner, of this city, herein acting as well for himself as for and in behalf of Mistress Josephine Valette, widow of the late Mark Thomas, as her attorney in fact, and John Hughes and Francois Valette, both of said parish of Orleans, the said parties being the sole owners of the Bellville Iron-Works, on the right bank of the river, in this parish, of the first part, and Ferdinand William Charles Cook and Ber-
15 nard Fallon, carrying on business as iron-founders in said Belleville Iron-Works, of the second part:

Which said appearers severally declared, that whereas by act passed in this office on the twenty-fourth day of November, eighteen hundred and fifty-four, the said parties hereto, of the first part, did lease, demise, and to farm let, for a period of five years, from the first of January, eighteen hundred and fifty-five, unto the said Ferdinand M. Cook, accepting the same, a certain portion of said Belleville Iron-Works, the

engine, boilers, and machinery, as the same will fully appear by reference to said above-recited act: Now, it having been agreed by and between the said parties to the above-recited lease and the said Bernard Fallon that a more extended lease, including the whole of the premises of the said Belleville Iron-Works, on such terms and for such time as shall be hereinafter recited and set forth, be made between the parties hereto;

The said parties to said lease of twenty-fourth November, 1854,
16 hereby do mutually cancel and annull said lease, and which annullation thereof shall be of date as of the first day of January last past, 1856.

And in consideration of the premises, for the sum and price and on the terms under the covenants and stipulations hereinafter set forth and expressed, the said parties hereto, of the first part, do hereby lease, demise, and to farm let unto the said parties of the second part, here present and accepting the same, all and singular the Belleville Iron-Works, situate in this parish, on the right bank of the Mississippi River, and opposite the third district of the city of New Orleans, which includes the building, the yard in the rear, and the following-described machinery now on the premises, to wit:

One steam-engine and two boilers; one large planing-machine; one small planing-machine; one boring-mill; two upright drill-machines; one large turning-lathe; eight turning-lathes of different sizes;
17 two face-lathes; one cutting-machine; one steam shear-punch and table; one binding-machine; one blacking-machine or coal-grinder; two large cranes and chairs; one small crane and chair, (of little value;) one drop-chain; two cupolas and fans; one sampson; two boring-shaft stands; twelve carpenters' benches; eleven tool presses or closets; five shank-ladles, (half used;) two crane-ladels, (half used;) ten anvils; one bell; one pair of clamps; one portable file-maker's forge; one portable brazier's cupola, with one pair tongs and five pair wooden flask-clamps; eighteen vices and fixtures; two shafts, with boilers; one small pair shears; one lever punch. The said iron-works being entitled to a right of way of the width of twenty feet to the water-line of the river, equally through the property of the said R. B. Sumner and that of the late firm of Hughes, Valette & Thomas: Now
18 the said appearers of the first part, according to their respective interests in said property, to wit, the said R. B. Sumner in one-half; the said John Hughes in one-fourth; the said Frances Valette in one-eighth; and the said Josephine Thomas, by her said attorney represented, in one-eighth; do hereby guarantee unto the said parties of the second part, and their assigns, the use of said right of way or of a free passage of not less than twenty feet, either through their own land or land adjoining immediately the same and under their control pending the duration of this lease.

Now, the conditions, time, terms, and stipulations on which this lease has been granted and accepted are as follows, to wit:

The lease of said premises, fixtures, machinery, and rights in, for, and during a period of ten years, to commence and be computed from the first day of January last past, (1856,) and determine and end on the thirty-first day of December, in the year eighteen hundred and sixty-five.

The compensation for the use and enjoyment of said iron-works,
19 engines, boilers, machinery, &c., pending the continuance of this lease shall be at the rate of three per cent. and fifty-hundredths of one per cent. on the gross amount of work done, prepared, or arranged

for by the said parties of the second part, as shown by the amount of claims or of accounts paid or unpaid that may be made by said parties of the second part for any work or transaction growing out of or from the prosecution of the usual foundry and machine-shop business, for which exclusive purpose only the property now leased is to be used. In order to reduce said claims and accounts to cash, *or* deducting therefrom of four per cent., shall be made, before calculating the rent, of three and a half per cent. on the gross amount of work done or contracted for as above. And the said parties of the second part hereby bind and obligate themselves that the nett amount of the rent to be paid by them for the use of said iron-works under this lease shall never be less for any one year during the lease than the sum of seven thousand
20 dollars.

On the first day of January of each successive year the said parties of the second part shall furnish to said parties of the first part an estimate of the probable amount of rent that will accrue and become due for the year, and they shall execute and issue rent-notes for said estimated amount, payable quarterly, for the current year, except for this present year, the estimate for which is herein declared to be seven thousand five hundred dollars, payable as follows: One-half on the first day of July proximo, one-fourth on the first day of October, and one-fourth on the first day of January, for which said parties of the second part have this day issued three several promissory rent-notes, made by them to their own order, and by them endorsed, all dated this day, the one payable 1st July next for thirty-seven hundred and fifty dollars, and those payable on the first of October and first of January next each for eighteen hundred and seventy-five dollars, the which
21 being delivered to said parties of the first part, the receipt of the same is hereby acknowledged and fully discharged, and acquittance therefor granted.

On the first day of January in each year, the said parties of the second part shall furnish said parties of the first part with a statement showing the gross amount of accounts and claims for the preceeding year, as above specified, to which shall be added the amount of unfinished work on hand, as nearly as can be estimated, and on the sum total of both statements, less four per cent., as hereinabove agreed, the rent of three and a half per centum on the work shall be calculated, and any excess shown over the sum already paid for said year will be payable in cash to said parties of the first part, but should the amount of such rent not equal the amount that has been paid, then the said parties of the first part shall pay to the said parties of the second part the difference between the amount of the rent paid and that actually due,
22 provided, always, that the nett amount of such rent shall never be less than the sum of seven thousand dollars, as above agreed. Such estimated sum as may be added to the yearly settlement for unfinished work for any one year shall be deducted from the total amount upon which the rent for the ensuing year of three and a half per cent. is payable; that is, the rent per annum shall be full three and a half per cent. on the entire amount yearly of work executed, whether finished or not. And the said parties of the second part hereby guarantee that said percentage-rent shall produce annually not less than seven thousand dollars.

The engines, boilers, and machinery herein enumerated, at the conclusion and on the determination of the lease, to be returned in good order and condition, natural wear and tear excepted, and any articles

herein enumerated being lost or missing to be replaced by said parties of the second part, at their proper cost and charge.

It is hereby agreed that the said parties of the second part are
23 at liberty to make all changes or alterations in the machinery that they may desire, but at their own proper cost and charge; provided such changes or alterations shall not depreciate said machinery in value.

And also, for and in consideration of the sum of five hundred dollars per annum, payable on the thirty-first day of December, in each year, during the continuance of this lease, by the said parties of the second part, in the following proportion, to wit: to said A. B. Sumner, three-fourths; John Hughes, one-eighth; Francois Valette, one-sixteenth, and Josephine Thomas, one-sixteenth, they hereby guarantee unto said party of the second part during the term of this lease the exclusive use of one hundred and forty feet of river-line for the purpose of mooring vessels, which one hundred and forty feet of front shall adjoin the twenty feet of right of way above granted, and until the thirtieth day of September, 1860, the said twenty feet right of way is declared to be
24 fixed through the property of I. Thayer, now leased by him to John Hughes, to wit: the upper twenty feet of said property, bounded by Elmira street on the upper line, and between Paterson street and the river; and the said one hundred and forty feet of river line is declared to be and fixed, until the aforesaid date of 30th September, 1860, the river-line of the said property of Thayer, now leased to said John Hughes, measuring about one hundred and forty-five feet, more or less, exclusive of the twenty feet for right of way above set forth, and after said date of 30th September, 1860, the owners of said iron-works may continue to said parties of the second part the same right of way and river-line as above specified, for the balance of the time this lease has to run, or they may substitute therefor a right of way of twenty feet, and river-line of one hundred and forty, opposite the iron-works, between Chesnut and Elmira streets, at the option of said parties of the first part, the twenty feet right of way in either case to adjoin the one hundred and forty feet river-line hereinbe-
25 fore mentioned. Whatever improvements exist on said river-line hereby leased shall be kept by said parties of the second part, at their own proper cost and charge, in good repair. The right to use the batture between the river-line and the public road, except for mooring-posts for vessels, is not granted or included in said guarantee, but said parties of the second part may build wharves or platforms extending from said batture to the river, for their own use and convenience.

And in consideration of the lease, the said parties of the first part have agreed to appropriate the sum of three thousand dollars, to be expended under the directions of said parties of the second part, for the purpose of encasing all the lower tier of windows of the works with iron-wire grating, providing new iron gates, plastering, stair-cases, and offices throughout the building, and such other improvements to the property as said parties of the second part may wish to make; but any expense therefor over and above the said sum of three
26 thousand dollars that may be incurred must be borne solely by the said parties of the second part, who are hereby authorized to make any changes in the internal arrangement of the property that they may think proper to do, provided that no injury to or depreciation of the value of the property be thereby made, and that such charges shall be at the proper cost of said parties of the second part.

And the said sum of three thousand dollars shall be payable to said parties of the second part by instalments on the completion of each successive change or addition. And should the said parties of the second part fail or neglect to pay a rent-note at its maturity, such failure shall work a forfeiture of this lease, and it shall be lawful for said parties of the first part, without any other proceedings, immediately after such failure to pay, to enter upon and take possession, for their own use and benefit, the property as it is hereby leased.

And it is also agreed that the window-glass shall be kept in repair by said tenants; that the name of the property shall not
27 be changed, and in case of any disagreement between the parties hereto, their differences shall be settled by arbitrators, one to be by each party chosen, and in case of their not agreeing, said arbitrators to select their umpire, whose award shall be final and binding.

Thus done and passed in my office at New Orleans aforesaid, in presence of Edward O. Willard and Benjamin Peters Leefe, competent witnesses, who have hereto signed their names, together with said appearers, and me, notary.

(Original signed)

R. B. SUMNER.
F. W. C. COOK.
JOHN HUGHES.
B. FALLON.
FRANCOIS VALETTE.
BENJ. P. LEEFE.
EDW'D O. WILLARD.

R. BRENNAN,
Not. Pub.

I hereby certify the foregoing to be a true copy of the original act, of record in my current register. In faith whereof I have hereto signed my name and affixed the impress of my official seal, this nineteenth day of June, A. D. 1856.

[SEAL.] (Signed)

R. BRENAN,
Not. Pub.

28 *Act of transfer referred to in the foregoing bill.*

STATE OF LOUISIANA,
Parish of Orleans & City of New Orleans:

Be it known that, on this first day of the month of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Richard Brenan, a notary public in and for the parish of Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally appeared Charles Ferdinand William Cook and Bernard Fallon, both of this city, carrying on business under the firm of Cook & Fallon, of the first part, and James I. Person, herein acting for and in behalf of the Belleville Iron-Works Company of New Orleans, an association duly incorporated under the laws of the State of Louisiana, as the president thereof, by virtue of a resolution of the board of directors of said incorporations, a certified copy of which is hereto annexed for ref-
29 erence, of the second part:

Which said appearers severally declared that, for and in consideration of the sum and price, and on the terms hereinafter set forth and expressed, the said appearers of the first part had agreed to sell to

the said Belleville Iron-Works Company all and singular the machinery, tools, and stock in trade unto said appearers of the first part belonging, and contained in the Belleville Iron-Works, on the ninth day of March last past, consisting as per inventory hereto annexed and signed by said appearers, witnesses, and me, notary, and marked ne varietur by me, in order to identify the same herewith, and also to transfer unto the said Belleville Iron-Works Company, from and after said date of the ninth March last past, the surrender of the lease of said Belleville Iron-Works, with the right of way to low-water mark of the Mississippi River, of twenty feet in width, and certain machinery on said premises, all of which will appear by reference to an act passed in this office on the twelfth June last past, 1856; the lease of which premises
30 and machinery will determine and end on the thirty-first day of December, in the year one thousand eight hundred and sixty-five; which lease is subject to the payment of a certain percentage of the gross receipts of the works, as will appear by reference to the aforerecited act of the 12th June, 1856, made now a part of this act. Also to the unexpired portion of the lease which said parties have of the office, number eleven, Commercial Place, in this city, from the said ninth day of March last past until the determination of said lease, which will end on the thirty-first day of October, eighteen hundred and fifty-nine, and subject to a rent of twelve hundred dollars per annum, in notes of three hundred dollars each, made by said parties of the first part in favor of Edward W. Sewell, as the whole will appear by reference to an act before William L. Poole, a notary in this city, on 28th October, 1856, to which particular reference is here made. And, lastly, to transfer all the running contracts on hand, on said ninth March last,
31 for work engaged to be done by the said parties of the first part hereto.

Now the said parties of the first part, in conformity to the afore-recited agreement, do hereby sell, transfer, and set over unto the said Belleville Iron-Works Company, the said appearer of the second part in his said capacity for them accepting and purchasing and acknowledging the due possession and delivery thereof, of all the machinery, tools, and stock in trade, as per said inventory hereto annexed, as also all the running contracts on hand as aforesaid, for work engaged to be done by said parties of the first part, and also assume the leases referred to above, subject to all the conditions and agreements therein contained, and to pay the rents for the same according to the tenor of said public acts respectively; and said party of the second part, in his said capacity, full acquittance and discharge grants for the possession of all which.

The sale of said machinery, tools, and stock in trade, and bene-
32 fit of the unexpired terms of said lease, and of the running contracts on hand for work engaged, is made and accepted for the price and sum of one hundred and sixty-four thousand eight hundred and eighteen dollars and thirty-four cents, in part payment and deduction whereof the said party of the second part, in his said capacity, to the said parties of the first, have paid in cash the sum of thirty-two thousand nine hundred and sixty-three dollars, sixty-seven cents, and for the balance of the purchase-money the said party of the second part, in his said capacity, furnished certain promissory notes of said Belleville Iron-Works Company, in favor of said parties of the first part, under the firm and style of Cook & Fallon, all dated the ninth day of March last, and payable respectively at three, six, nine, and twelve months after date, making, together, the total balance of one hundred and thirty-one thousand eight hundred and fifty-four dollars, sixty-seven cents, the

receipt of which promissory notes, as also of the cash payment being to them made, the said parties of the first part hereby acknowledge,
33 and full discharge and acquittance for the same hereby grant.

Now to these presents intervened Richard Bartlett Sumner, of this city, herein acting as well for himself as for his co-owners of said Belleville Iron-Works and the machinery thereof, under and by virtue of the power to him by them granted, who, having taken due cognizance of the foregoing, declared that for himself and his said co-owners he has no objections to the transfer and assignment of the lease of said Belleville Iron-Works as is herein made to and accepted by the said party of the second part in his said capacity, and accordingly for them accepts the said Belleville Iron-Works Company as tenants of said works under said lease. And also intervened Edward William Sewell, owner of the office number eleven, Commercial Place, who also, after taking cognizance as aforesaid of the transfer of the lease of said office as above, accepts said company as his tenants therefor under the terms of said lease.

Thus done and passed in my office, at New Orleans aforesaid,
34 in presence of Alfred A. Ducros and Edward O. Willard, competent witnesses, who have hereto signed their names, together with said appearers and me, notary.

(Original signed)

J. J. PERSON, *President.*
F. W. C. COOK.
B. FALLON.
R. B. SUMNER.
E. W. SEWELL.
ALFRED A. DUCROS.
EDW. O. WILLARD.
R. BRENAN, *Not. Pub.*

I certify the foregoing to be a true and correct copy of the original act of record in my current register.

In faith whereof I have hereunto subscribed my name and affixed the impress of my official seal at New Orleans, this seventh day of April, eighteen hundred and fifty-seven.

[SEAL.] (Signed) R. BRENAN,
Not. Pub.

Check and protests referred to in the foregoing bill.

NEW ORLEANS, *Jan'y 30th*, 1863.

To the cashier of the Bank of America:

Please pay to the order of R. B. Sumner eleven thousand eight
35 hundred and sixty-seven $\frac{07}{100}$ dollars, the balance now to my credit on the books of your bank, together with interest to be reckoned on my account, commencing with the date of the first deposit, at the rate of three per cent. per annum, as agreed upon at that time with W. G. Hewes, esq., pres't.

$11,867.07] (Signed) R. WELLS,
Syndic of the estate of the Belleville Iron-Works Co.

[2c. int. rev. stamps affixed & cancelled.]

(Endorsements on above check.)
(Signed) R. B. SUMNER.

MAY 9th, 1863.

Pay to the order of Samuel Sumner and A. P. Perkins, jointly or severally.

(Signed) R. B. SUMNER.

(Signed) S. SUMNER.

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this fifth day of May, in the year one thousand eight hundred and sixty-
36 three, at the request of Mr. Richard B. Sumner, of this city, holder of the original check or draft, whereof a true copy is on the reverse hereof written, I, Selim Magner, a notary public in and for the city and parish of New Orleans, duly commissioned and sworn, presented said check or draft to Mr. Charles Cavaroe, president of the Bank of America, on which the same is drawn, and demanded of him payment thereof. He answered that the said check or draft could not be paid, the amount therein specified having been garnishe'd.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said check or draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said check or draft.

Thus done and protested in the presence of James Fahey and Paul Augrain, both of this city, witnesses.

37 In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) S. MAGNER,
Notary Public.

NEW ORLEANS, *Jan'y 30th*, 1863.

To the cashier of the Bank of America:

Please pay to the order of R. B. Sumner eleven thousand eight hundred and sixty-seven $\frac{07}{100}$ dollars, the balance now to my credit on the books of your bank, together with interest, to be reckoned on my account, commencing with the date of the first deposit, at the rate of three per cent. per annum as agreed upon at that time with W. G. Hewes, esq., pres't.

$11,867.07] (Signed) R. WELLS,
Syndic of the estate of the Belleville Iron-Works Co.

(Endorsed:) R. B. SUMNER.

NEW ORLEANS, *May* 5, 1863.

C. CAVAROE, Esq.,
Pres't Bank of America:

38 DEAR SIR: In reference to the check of R. Wells, syndic of the Belleville Iron-Works Company, on your bank in my favor for $11,867.07, protested this day for non-payment, I beg to state that this check was paid to me by Mr. Wells for payment of rent and in accordance with judicial proceedings in the fourth district court of this city. You answer to the demand for payment that the amount of the check has been garnisheed.

I now wish to protest in full against said answer, and to state that I shall hold the Bank of America liable to me for the amount of said check, with interest and costs. And I further protest and warn the bank against the payment, under any pretence or order whatsoever, of the amount, or any part of the amount, to the credit of R. Wells, syndic, on the books of the bank and represented by the check in my favour as above stated.

Respectfully, y'r ob'd't serv't,
(Signed) R. B. SUMNER.
(Signed) C. ROSELIUS,
Counsel.

39 *Plea in bar.—Filed May* 31, 1867.

In the circuit court of the United States for the 5th circuit and dist. of Louisiana. In chancery.

SUMNER, HUGHES & VALETTE
vs.
HOLDANE & Co.
No. 5177.

The plea of the defendant Holdane & Co. to the bill of complaint of R. B. Sumner, Mrs. Hughes, and Valette, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged against these defendants, they do plead in bar, and for plea say that, by the law of the State of Louisiana,
40 as contained in civil code and code of practice, it was enacted and made the law of said State that no action would lie at law for the recovery of any sum of money for the rent of property after the lapse of three years from the maturity of the same, as will be seen in the article 3503 of the said civil code. And that the claim set forth in the bill of the complainants was due more than three years before they filed their bill against these defendants, and they are forever barred as against these defendants from claiming the same. And that the averments of the said bill of complaint form no exception or interruption to the prescription established by law.

And these defendants, for further plea, say that the fact, as set forth by complainants, that the amount of rent claimed by them was put upon the account of the pretended insolvent proceedings in the fourth district court of New Orleans, was not an interruption of prescription, as
41 the whole pretended insolvent proceedings were null and void from the beginning, and did not prevent legal proceedings being instituted, and the exercise of the lessor's privilege, according to the law of Louisiana.

All of which matters and things these defendants do aver to be true, and plead the same to the whole of said bill, and humbly demands the judgment of this hon. court, whether they ought to be compelled to make any answer to said bill of complaint, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

(Signed) ROBERT MOTT,
For Holdane & Co., who are absent.

I, Robert Mott, of counsel for the defendants Holdane and Co., do certify that, in my opinion, the foregoing plea is well founded in point of law.

(Signed) ROB'T MOTT,
Sol. for Def'ts.

42 Personally appeared Robert Mott, the solicitor of the defendants Holdane and Company, who, being sworn, deposes and says, that his clients are absent from the State of Louisiana, and have never been in the same to deponent's knowledge; that the subpœna and process in the said proceeding in chancery are all served on deponent, who alone represents them.

That the foregoing plea is not interposed for delay, and that it is true in point of fact.

(Signed) ROBERT MOTT,
For Holdane & Co., who are absent.

Sworn to and subscribed before me this 31st day of May, 1867.

(Signed) F. B. VINOT,
D'y Cl'k.

Amended plea in bar.—Filed June 17th, 1867.

In the circuit court of the U. S. for 5th circuit and dist. of La. In chancery.

SUMNER, HUGHES & VALETTE *vs.* HOLDANE & Co. } No. 5177.

43 The amended plea of the defendants Holdane & Co. to the bill of complaint of R. B. Sumner, Mrs. Hughes, John Hughes, and Valette, complainants:

These defendants for further plea in bar to the complainant's bill of complaint do plead, that, by the law of Louisiana, the lessor of immovable property had and has a privilege on the property of the lessee, situated or being in or on the leased premises, during the time the property remains on the leased premises, and for fifteen days after removal, and no longer, and that the said privilege ceases after that time, and does not follow the proceeds of the said property after it is or has been sold, except and in the case where the property has been seized and sold under process of law, and the proceeds are held subject to the orders of a court of competent jurisdiction for distribution or disposition; and that, in the present case, the complainants never did legally invoke the aid of the process of a court of competent jurisdiction to en-

44 force their lien or privilege; that no court had legal custody of the same, nor had any court the right to distribute the proceeds of the said property after it was sold, and that the sheriff was merely the agent of the Belleville Iron-Works for the sale of the said property, and the proceeds of the sale were the property of the said Belleville Iron-Works so long as they remained in the Bank of America, and that the said property, the proceeds of which are under seizure, by virtue of the execution of these defendants against the Belleville Iron-Works Co. were removed from the said leased premises more than fifteen days previous to any claim being legally set up by said complainants against these defendants, or said Belleville Iron Works Co., and the said complainants, by the law of Louisiana, never had a lien or privilege on the proceeds of the said property after the removal thereof from the leased

premises, or the sale of the said property; all of which matters
45 and things these defendants do aver to be true, and plead the same to the whole of said bill, and humbly demand the judgment of this hon. court whether they ought to be compelled to make any answer to the said bill of complaint; and humbly pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

(Signed) ROBERT MOTT,
For Holdane & Co., who are absent.

I, Robert Mott, of counsel for the defendants Holdane & Co., do certify that, in my opinion, the foregoing plea is well founded in point of law.

(Signed) ROBERT MOTT,
Solicitor for Def'ts Holdane & Co.

Personally appeared Robert Mott, the solicitor of the defendants Holdane and Co., who, being sworn, deposes and says that his clients are absent from the State of Louisiana, and have never been in the same to deponent's knowledge; that the subpœnas and process in the said proceeding in chancery were all served on deponent, who alone rep-
46 resents them; that the foregoing amended plea is not interposed for delay, and that it is true in point of fact.

(Signed) ROBERT MOTT.

Sworn to and subscribed before me this 17th day of June, 1867.
(Signed) F. B. VINOT, *D'y Clk.*

Let this amended plea in bar be filed this 17th June, 1867.
(Signed) E. H. DURELL, *Judge.*

Motion and order: Pleas in bar fixed.—Extract from the minutes.

United States circuit court, fifth circuit and district of Louisiana, April term, 1867.

NEW ORLEANS, *Saturday, June* 22, 1867.

Court met pursuant to adjournment.

Present, Hon. E. H. Durell, district judge; absent, Hon. I. M. Wayne, presiding judge.

SUMNER, HUGHES & VALETTE
vs.
HOLDANE & CO. & ALS. } No. 5177.

47 On motion of Robert Mott, solicitor for defendants, ordered that the pleas in bar filed 31st May and 17th June, 1867, be assigned for argument on Thursday, 27th instant, at 11 a. m., and that the complainants be notified hereof.

Argument on pleas in bar continued.—Extract from the minutes of Thursday, June 27, 1867.

SUMNER, HUGHES & VALETTE
vs.
HOLDANE & CO. & ALS. } No. 5177.

By consent of counsel the argument on the pleas in bar is continued till the 3d day of July next, at 11 a. m.

Hearing and continuance of argument on pleas.—Extract from the minutes of Wednesday, July 3, 1867.

SUMNER, HUGHES & VALETTE
vs.
HOLDANE & CO. & ALS. } No. 5177.

48 This cause came up on defendants' pleas in bar—present, Bradford, Lea & Finney and Robert Mott—when the same was opened and continued till Friday, 5th instant, at 11 a. m.

Hearing and submission of pleas.—Extract from the minutes of Friday, July 5, 1867.

SUMNER, HUGHES & VALETTE
vs.
HOLDANE & CO. & ALS. } No. 5177.

This cause came up for trial on the defendants' pleas in bar—Bradford, Lea & Finney for pl'ffs, R. Mott for defendants—when, after hearing the pleadings, evidence, and argument, the court took time to advise.

Note of evidence.—Filed July 5, 1867.

SUMNER, HUGHES & VALETTE
vs.
HOLDANE & CO. } No. 5177.

49 It is agreed that the records of the several cases are considered in evidence, with the privilege to each party to select and pick out such parts thereof as shall be deemed necessary.

Holdane & Co. offered in evidence the records No. 3049 & 3090 of this court;

Also, records 12939, 12851, 4th district court;

Also, the decree of the supreme court in suit 12930, filed Febr'y 3d, 1860;

Also, page 685, &c., 18th La. annual reports;

Also, the answers of the Bank of America, filed 2d Febr'y, 1860, in suit 3049;

Also, the answer of R. Mills, filed 7th Febr'y, 1860, same suit.

Sumner, Hughes & Valette offer leases O & Q, now filed; also, records 12890 4th district court.

Both parties have furnished their points.

RECORD NO. 3049 OFFERED IN EVIDENCE BY HOLDANE & CO.
50 JULY 5TH, 1867.

Petition.—Filed January 29th, 1859.

To the honorable the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of John H. Holdane and James H. Holdane, both citizens of the State of New York, residing and doing business in the city and county of New York under the commercial style of Holdane & Co., respectfully shews:

That the Belleville Iron-Works Company, a corporation created by and existing under the laws of Louisiana, of which it is a citizen and having its domicil in the city of New Orleans, is justly and truly indebted unto your petitioners in the full sum of two thousand eight hundred and thirty-two $\frac{48}{100}$ dollars, with five per centum per annum interest on fourteen hundred and three dollars from the 12th October, 1858, together with current exchange on New York, and three $\frac{50}{100}$ dollars, costs of protests, and the like interest and current exchange on New
51 York on fourteen hundred and twenty-nine $\frac{48}{100}$ dollars from the 12th day of January, 1859, for this: That your petitioners are the owners and holders of two certain promissory notes executed by the president and secretary of the said company under the official seal of said corporation, which notes are drawn to the order of your petitioners, and are dated New Orleans, 9th January, 1858, the one for the sum of fourteen hundred and three dollars, with current exchange on New York, and the other for the sum of fourteen hundred and twenty-nine $\frac{48}{100}$ dollars, with current exchange on New York, and which notes are made payable, respectively, at nine and twelve months after the date thereof, at the Citizens' Bank of New Orleans; that, at the maturity of the note for fourteen hundred and three dollars, the same was protested for non-payment; that the note for fourteen hundred and twenty-nine $\frac{48}{100}$ dollars is past due and remains unpaid; all of which will more fully appear by reference to the notes and protest annexed to and made part hereof.

52 Wherefore petitioners pray that the said Belleville Iron-Works Company be cited to appear and answer hereto; that, after due proceedings had, judgment be rendered against it for the said sum of two thousand eight hundred and thirty-two $\frac{48}{100}$ dollars, with five per centum per annum interest on fourteen hundred and three dollars from the 12th day of October, 1858, until paid, together with current exchange on New York, and three $\frac{50}{100}$ dollars costs of protest, and the like interest on fourteen hundred and twenty-nine $\frac{48}{100}$ dollars from the 12th day of January, 1859, until paid, together with current exchange on New York, costs of suit, &c. And petitioners further pray for all further and equitable relief and remedy, &c.

(Signed) MOTT & FRAZER, *Att'ys.*

Notes and protest referred to in foreigiŋg petitions.

Notes.

BELLEVILLE IRON-WORKS COMPANY,

$1,429.48.] *New Orleans, 9th January,* 1858.

Twelve months after date we promise to pay to the order of
53 Messrs. Holdane & Co., at Citizens' Bank N. Orleans, fourteen hundred twenty-nine $\frac{48}{}$ dollars, value received, with current exchange on N. York.

(Signed) R. WELLS,
President pro tem. [SEAL.]

" B. FALLON,
Secretary.

No. 142. Due 9-12 Jan'y, 1859.

(Endorsed:)

Pay to the order of Robert Mott, counsellor at law.

(Signed) HOLDANE & CO.

BELLEVILLE IRON-WORKS COMPANY,
$1,403.] *New Orleans, 9th January*, 1858.

Nine months after date, we promise to pay to the order of Messrs. Holdane & Co., at Citizens' Bank, N. Orleans, fourteen hundred three dollars, value received, with current exchange on N. York.

(Signed) R. WELLS,
President pro tem. [SEAL.]
" B. FALLON,
Secretary.

No. 141. Due 9-12 Oct., 1858.

(Endorsed:)
HOLDANE & CO., *New York:*
Pay Jos. Ran, cashier, or order.
(Erased:) R. H. LOWRY, *Cas.*

54 Protest.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known that, on this twelfth day of October, in the year one thousand eight hundred and fifty-eight, at the request of Joseph Ran, esq., cashier, holder of the original note, whereof a true copy is on the reverse hereof written, I, Pierre Charles Cuvellier, a notary public in and for this city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, by my deputy, O. L. Kernion, presented said note at the Citizens' Bank in this city, where it is made payable within banking hours to the proper officers, and, demanding payment thereof, was answered that no funds had been placed there to pay it.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs,
55 charges, and interest suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of A. L. Kernion and A. L. H. Kernion, witnesses.

(Signed) A. L. KERNION,
A. L. H. KERNION,
P. CH'S CUVELLIER.
Not. Pub.

A true copy of the original on file in my office.

In testimony whereof I grant these presents under my signature and the impress of my seal of office at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) P. CH'S CUVELLIER,
Notary Public.

$1,403.] BELLEVILLE IRON-WORKS COMPANY,
New Orleans, 9th January, 1858.

Nine months after date we promise to pay to the order of Messrs.

Holdane & Co., at Citizens' Bank, N. Orleans, fourteen hundred three dollars, value received, with current exchange on N. York.

R. WELLS,
President pro tem.
B. FALLON, *Sec'y.*

(Endorsed:)

HOLDANE & CO., *New York.*

56 Pay Ja's Ran, cashier, or order.

R. H. LOWRY, *Cos.*

Citation.—Issued 29th January, 1859.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

HOLDANE & CO.,
vs.
BELLEVILLE IRON-WORKS.

You are hereby duly commanded to summon Belleville Iron-Works Company, a corporation created by the laws of, and a citizen of, the State of Louisiana, to comply with the demand of Holdane & Co., citizens of the State of New York, contained in the petition of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the circuit court of the United States fifth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered
57 against them by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1859.

Witness the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of January, A. D. one thousand eight hundred and fifty-nine, and of the independence of the United States of America the eighty-third year.

[SEAL.] (Signed) J. W. GURLEY, *Clerk.*

Marshal's return.

Received this 29th day of January, 1859, and on the 31st day of January, 1859, served copies of the within citation, plaintiff's petition, and documents annexed, on the within named Belleville Iron-Works in the manner following, to wit: by handing the same to J. J. Person, president of said Belleville Iron-Works, in person, in the city of New Orleans, and returned this writ into court February 1st, 1859.

(Signed) CH'S CATOIR, *D'y Mar'l.*

58 *Default.—Extract from the minutes.*

United States circuit court, fifth circuit and eastern district of Louisiana. November term, 1858.

NEW ORLEANS, *Tuesday, 15th February*, 1859.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge. Absent Hon. J. A. Campbell, presiding judge.

HOLDANE & CO.,
vs.
BELLEVILLE IRON-WORKS. } No. 3049.

On motion of A. A. Fraser, esq., and on showing to the court that process of citation herein has been duly served on the defendants, and that they have failed to plead or answer within the legal delay, it is ordered that judgment by default be herein entered.

Motion and order default set aside.—Extract from the minutes of Friday, 18th February, 1859.

59 HOLDANE & CO.,
vs.
BELLEVILLE IRON-WORKS. } No. 3049.

On motion of E. A. Bradford, esq., of counsel for defendants, ordered that the default herein be set aside, and that defendants be allowed to file an answer.

Exception and answer.—Filed February 18th, 1859.

U. S. circuit court.

HOLDANE & CO.,
vs.
BELLEVILLE IRON-WORKS CO. } No. 3049.

Now come the said defendants, by their attorneys, Benjamin, Bradford & Finney, and except to the present suit, that the same cannot be had or maintained, inasmuch as the said corporation has made a cession of its property to its creditors, in the suit now pending in the fourth district court of New Orleans and entitled the Belleville Iron-Works Co. vs. Its Creditors and that the said corporation was thereby dis-
60 solved. But in case this exception be overruled, then, and not otherwise, defendants plead general denial, and pray to be hence dismissed with costs and for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Order.—Extract from the minutes of Wednesday, 4th May, 1859.

HOLDANE & CO.,
vs.
BELLEVILLE IRON-WORKS. } Nos. 3049 & 3090.

The exceptions in these causes were argued by Robert Mott, esq. on part of the plaintiffs, and left open to allow defendants' counsel to be heard.

Order.—Extract from the minutes of Friday, 6th May, 1859.

Nos. 3049 & 3090.

On motion of Robert Mott, esq., of counsel for plaintiffs, ordered that these causes be assigned for trial for Wednesday next, and that defendants be notified.

61 *Judgment.—Extract from judgment docket.*

Circuit court of the United States, fifth circuit and eastern district of Louisiana. April term, 1859.

NEW ORLEANS, *Wednesday 11th May*, 1859.

Court met pursuant to adjournment.
Present, Hon. J. A. Campbell, presiding judge.
Present, Hon. Theo. H. McCaleb, district judge.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3049.

This cause came on to be heard, and was argued by counsel. Whereupon, on consideration whereof, and by reason of the law and the evidence, it is ordered, adjudged, and decreed that the exceptions herein filed be overruled, and that the plaintiffs, Holdane & Co., do have and recover judgment against the defendant, the Belleville Iron-Works Company, for the sum of twenty-eight hundred and thirty-two dollars
62 and forty-eight cents, with interest at the rate of five per cent. per annum upon fourteen hundred and three dollars thereof, from 12th October, 1858, until paid, and like interest on the remaining sum of fourteen hundred and twenty-nine dollars and forty-eight cents, from 12th day of January, 1859, till paid, and three dollars and fifty cents costs of protest, and costs of suit.

Judgment rendered 11th May, 1859.
Judgment signed 16th May, 1859.
(Signed)

J. A. CAMPBELL,
Associate Justice S. C. U. S.

Supplemental petition and order.—Filed November 21st, 1859.

To the honorable the United States circuit court for the fifth circuit and eastern district of Louisiana.

The petition of Holdane & Co., a commercial firm, composed of who reside in the city and State of New York, of which State they are citizens, respectfully shows: That petitioners obtained a final judgment on the eleventh day of May,
63 1859, in the suit No. 3049, on the docket of this honorable court, against the Belleville Iron-Works Company, a corporation, citizen of the State of Louisiana, for the sum of twenty-eight hundred and thirty-two $\frac{48}{100}$ dollars, with interest at the rate of five per centum per annum, from the 12th October, 1858, on 1,403 dollars, and on the sum of 1,429 $\frac{48}{100}$ dollars from the 12th day of January, 1859, until paid, three $\frac{50}{100}$ dollars costs of protest, and costs of suit. That execution has been issued for the amount of said judgment, and is now in the hands of the marshal of this district. That petitioners are informed that F. W. C. Cook and Bernard Fallon severally owe the said defendant money, or hold or possess property of some kind, belonging to or in which said defendant is interested.

Wherefore petitioners pray that the said F. W. C. Cook and Bernard Fallon severally be made garnishee, served with a copy of this petition, cited to answer hereto, ordered to answer under oath the annexed
64 interrogatories, and be condemned to pay the amount of the

aforesaid judgment, interest, and costs, out of the funds in their hands, and to deliver to the marshal satisfaction of said execution, all the property, rights, and credits in their possession or under their control belonging to or in which defendant is interested. And that petitioner be decreed a privilege on the property seized, and for costs and general relief, &c.

(Signed) MOTT & FRASER,
Att'ys for pl'ffs.

Interrogatories to be answered by F. W. C. Cook and Bernard Fallon, severally garnishees, under oath.

First. Do you owe the said Belleville Iron-Works Company, defendant as aforesaid, any sum of money? If yea, does the same amount to the sum of ten thousand dollars? if not to that sum, in what amount are you indebted to said company?

Second. Have you in your possession or under your control any money, property, rights, or credits of any kind or description belonging to the Belleville Iron-Works Company, the said defendant, or in which
65 said company was or is in any way interested? If yea, does the value of the same amount to the sum of ten thousand dollars? If not to that sum, state what less value the same is of.

Third. Were you not stockholders in the Belleville Iron-Works? If yea, in what amounts?

Fourth. Did you pay up the amount of your subscription to said stock? Do you not owe on your said subscription to stock a sum amounting to ten thousand dollars?

Fifth. Have you in any way paid your subscription to the stock of said company? If yea, how did you pay it, and when did you pay it?

(Signed) MOTT & FRASER.

Order.—November 21st, 1859.

Let this be filed, and let F. W. C. Cook and Bernard Fallon be made party garnishees, and cited to answer hereto, and answer under oath and in writing the foregoing annexed interrogatories.

(Signed) THEO. H. McCALEB,
U. S. Judge.

66 *Fi. fa.—Issued November 21st, 1859.*

Circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana or his lawful deputy, greeting:

You are hereby commanded that you demand from the Belleville Iron-Works Co. the sum of fourteen hundred and fifty-five dollars and ninety-cents, with interest thereon at the rate of five per cent. per annum, from the 12th April, 1859, till paid, and costs of suit:

Clerk's costs	21 80
Marshal's "	4 00
Attorney's fees	10 00

—and the cost for executing this writ, cash, which Holdane & Co., lately recovered by judgment of the circuit court of the United

States for the fifth circuit and eastern district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Belleville Iron-Works Co., except slaves, in your district. If sufficient personal estate, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said Belleville Iron-Works Co., in your district, whereof the said corporation or company were owners on the sixteenth day , into whose hands soever the same may have come, and that you have those moneys before our said court, to render to the said Holdane & Co., for the judgment aforesaid on the seventeenth day from this date, together with this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 21st day of November, A. D. 1859, and eighty-fourth year of the independence of the United States.

(Signed) J. W. GURLEY, *Clerk*,
By O. LAVISSON, *D'y Clerk*.

Marshal's return thereon.

Received November 21, 1859, and not being able to find the defendants, or any property belonging to them, I return this writ of fi. fa. not satisfied.

Returned March 9, 1860.

(Signed) CH'S CATOIR, *D'y Mar.*

Answer of B. Fallon, garnishee.—Filed December 1, 1859.

U. S. circuit court.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS CO. } No. 3049.

BERNARD FALLON, made garnishee herein, being duly sworn, answers to the interrogatories of the said plaintiffs as follows:

To the first interrogatory: I was a stockholder in the Belleville Iron-Works Co. to the amount of $25,000, (twenty-five thousand dollars.)

To the second interrogatory: I have paid up the amount of my subscription, as hereafter stated. I do not owe anything on that account.

To the third interrogatory: At the organization of the said company the subscription to stock was settled as follows: ¼th in cash, and the balance in notes, payable respectively the 9–12th June, 9–12th September, and 9–12th December, 1857, and 9–12th March, 1858. I made the cash payment on account of my subscription of $5,000, and also took up three of my subscription-notes at maturity, say together $15,000—the other stock-notes of $5,000, I was unable to pay, and, consequently, on the 15th Dec'r, 1858, I applied to the company, representing my insolvent condition, and offering to pay $500 in full settlement of my note for $5,000. This proposition having been accepted, the payment of $500 was made, in full discharge of my note, as aforesaid, which was accordingly given up, and returned to me and cancelled.

(Signed) B. FALLON.

Sworn to and subscribed before me on this first day of December, 1859.

(Signed) J. W. GURLEY,
Clerk of U. S. Circuit Court, E. D. of La.
By O. LAVISSON, *Dep. Clerk.*

70 *Answer of F. W. C. Cook, garnishee.—Filed December 2, 1859.*

U. S. circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3049.

Answers of F. W. C. Cook, garnishee, to the interrogatories herein propounded to him:

To 1st interrogatory: I did owe to the Belleville Iron-Works Company the sum of twenty thousand dollars, being the amount of four notes of five thousand dollars each, drawn by me, and, as far as I can recollect, having kept no memorandum of said notes, drawn to my own order, and by myself endorsed, payable respectively at three, six, nine, and twelve months from the 9th March, 1857. Said notes are, I presume, in the hands of the syndic or liquidators of the said company, unless they have been negotiated. I still owe said notes, but I do not know in whose possession they now are.

To 2nd interrogatory: No.

71 To 3rd interrogatory: Yes, in the sum of $25,000, of which $5,000 were paid for me by B. Fallon, and charged by him in account. The notes referred to in my first answer were furnished by me for the balance of my subscription.

To 4th interrogatory: No. As I stated in my preceeding answer, I owe the amount of the four notes of five thousand dollars each, but I do not know who holds the said four notes, amounting together to the sum of $20,000 dollars.

To 5th interrogatory: No; except five thousand dollars, as above stated, leaving a balance of 20,000 dollars to the holders of said four notes, whoever they may be, said notes having been furnished by me for my subscription of 250 shares of the capital-stock of the said Belleville Iron-Works Company, at one hundred dollars per share.

(Signed) F. W. C. COOK.

Sworn to and subscribed before me this 2nd day of December, 1859.

(Signed) J. W. GURLEY, *Clk*,
By O. LAVISSON, *D'y Clk.*

72 *Supplemental petition and order thereon.—Filed 23rd January, 1860.*

To the honorable United States circuit court for the fifth circuit and eastern district of Louisiana.

The petition of Holdane & Co., who reside in New York, of which State they are citizens, respectfully shews: That petitioners obtained a final judgment on the 16th May, 1859, in the suit No. 3049 on the docket of this honorable court, against the Belleville Iron-Works Company, a citizen of the State of Louisiana, for the sum of twenty-eight hundred and thirty-two $\frac{48}{100}$ dollars, with interest at the rate of five per centum per annum from the 15th day of October, 1858, until paid, on the sum

of 1,403 dollars, like interest on the remaining sum of $1,429.48 from 12th January, 1859, until paid, and three $\frac{50}{100}$ dollars, costs of protest and costs of suit.

That execution has been issued for the amount of said judg-
73 ment, and is now in the hands of the marshal of this district; that petitioners are informed that R. Wells, the Bank of Louisiana, the Citizens' Bank of Louisiana, the Mechanics and Traders' Bank, the Merchants' Bank, the Bank of New Orleans, the Bank of America, the Louisiana State Bank, the Southern Bank, the Canal Bank, the Branch of the Louisiana State Bank, and the Union Bank, owe the said defendant money, or they hold or possess property of some kind belonging to or in which said defendants are interested.

Wherefore petitioners pray that the said R. Wells and the said banks and banking corporations be made garnishees, served with a copy of this petition, cited to answer hereto, ordered to answer under oath the annexed interrogatories, and be condemned to pay the amount of the aforesaid judgment, interest, and costs out of the funds in their hands, and to deliver to the marshal, in full satisfaction of said execution, all the property, rights, and credits in their possession or under
74 their control, belonging to or in which defendants are interested.

And that petitioners be decreed a privilege on the property seized, and for costs and general relief, &c.

(Signed) MOTT & FRASER, *Att'ys.*

Interrogatories to be answered by the aforesaid garnishees under oath.

First. Do you owe the said Belleville Iron-Works Company, defendants as aforesaid, any sum of money? If yea, does the same amount to the sum of eight thousand dollars? If not to that sum, in what amount are you indebted to said Belleville Iron-Works Company?

Second. Have you in your possession or under your control any money, property, rights, or credits of any kind or description belonging to the Belleville Iron-Works Company, the said defendants, or in which they are in any way interested? If yea, does the value of the same amount to the sum of eight thousand dollars? If not to that sum, state what less value the same is of.

75 Third. Have you in your possession, as syndic, or commissioner, or receiver of the Belleville Iron-Works Company, any money received by you as the proceeds of the property of said company sold under the order of the 4th district court of New Orleans; and does the same amount to eight thousand dollars, or any less sum?

4th. Have you on deposit any sum of money, or any property to the credit of the Belleville Iron-Works Company, or of R. Wells, sydnic, or commissioner, or receiver of the said Belleville Iron-Works Company? If yea, does the same amount to eight thousand dollars, or any less sum?

5th. Have you in your possession or under your control any money or property belonging to "R. Wells, syndic," "R. Wells, commissioner," or "R. Wells, receiver?" If yea, does the same amount to eight thousand dollars? If not, to what less sum does it amount?

(Signed) MOTT & FRASER, *Att'ys.*

Order.

76 Let this be filed, and let the parties herein named be made

garnishees, and cited to answer, under oath, and in writing, the interrogatories herein propounded within the legal delay.

New Orleans, January 23rd, 1860.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Supplemental petition & order.—Filed January 25th, 1860.

To the honorable U. S. circuit court for the 5th circuit and eastern district of Louisiana:

The petition of Holdane & Co., who reside in New York, of which State they are citizens, respectfully shews: That petitioners obtained a final judgment, on the 16th May, 1859, in the suit No. 3049, on the docket of this honorable court, against the Belleville Iron-Works Company, a citizen of the State of Louisiana, for the sum of twenty-eight hundred and thirty-two $\frac{48}{100}$ dollars, with interest at the rate of five per centum per annum, from the 12th October, 1858, on 1,403 dollars,
77 and on the sum of 1,429 $\frac{48}{100}$ dollars, from the 12th day of January, 1859, until paid; three $\frac{50}{100}$ dollars, costs of protest, and costs of suit.

That execution has been issued for the amount of said judgment, and is now in the hands of the marshal of this district.

That petitioners are informed that E. T. Parker, a citizen of the State of Louisiana, owes the said defendants money, or holds or possesses property of some kind belonging to or in which said defendants are interested.

Wherefore petitioners pray that the said E. T. Parker be made garnishee, served with a copy of this petition, cited to answer hereto, ordered to answer, under oath, the annexed interrogatories, and be condemned to pay the amount of the aforesaid judgment, interest, and costs out of the funds in his hands; and to deliver to the marshal, in full satisfaction of said execution, all the property, rights, and credits in his possession, or under his control, belonging to or in which defendants are interested.

And that petitioners be decreed a privilege on the property seized, and for costs and general relief, &c.

78 (Signed) MOTT & FRASER, *Att'ys.*

Interrogatories to be answered by E. T. Parker, garnishee, under oath.

First. Do you owe the said Belleville Iron-Works Company, defendants as aforesaid, in any capacity whatsoever, any sum of money? If yea, does the same amount to the sum of eight thousand dollars? If not to that sum, in what amount are you indebted to the said Belleville Iron-Works Company?

Second. Have you, in your possession, or under your control, any money, property, rights, or credits of any kind or description belonging to the said Belleville Iron-Works Company, the said defendant, in any capacity whatsoever, or in which they are in any way interested? If yea, does the value of the same amount to the sum of eight thousand dollars? If not to that sum, state what less value the same is of.

3d. Have you, in your possession, in any capacity whatsoever,
79 any money belonging to the said Belleville Iron-Works Company as the proceeds of the property of said company sold under the order of the 4th district court of New Orleans? If yea, does the same amount to eight thousand dollars, or any less sum?

4th. Have you in your possession or under your control any money or property belonging to "R. Wells, commissioner," "R. Wells, receiver," or "R. Wells, syndic?" If yea, does the same amount to eight thousand dollars? If not, to what less sum does it amount?

(Signed) MOTT & FRASER, *Att'ys.*

Order.

Let this be filed, and let E. T. Parker be made a party garnishee hereto, and be cited to answer the interrogatories herein propounded, under oath and in writing, within the legal dely.

New Orleans, January 25th, 1860.

(Signed) THEO. H. McCALEB,
U. S. Judge.

80 *Answer of Citizens' Bank of La., garnishee.—Filed 26th January, 1860.*

United States circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3049.

The answers of the Citizens' Bank of Louisiana to the interrogatories herein propounded:

To the 1st interrogatory. No.
To the 2d " No.
To the 3d " No.
To the 4th " No.
To the 5th " No.

(Signed) JAMES O. DENIGRE, *Pres't.*

Sworn to and subscribed before me this 26th January, 1860.

(Signed) ARTHUR SAUCIER, *3d J. P.*

Answer of Merchants' Bank, garnishee.—Filed 26th January, 1860.

To the honorable U. S. circuit court for the 5th circuit & eastern district of Louisiana.

81 HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 3049.

In the above-cited case, to the interrogatories filed, I, W'm S. Mount, cashier of the Merchants' Bank, on behalf of said institution, answer to each and every interrogatory, No.

(Signed) W'M S. MOUNT.

Sworn to and subscribed before me this 26th January, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of Union Bank, garnishee.—Filed January 26th, 1860.

U. S. circuit court.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS CO. } No. 3049.

Answers to interrogatories by Geo. Alf Freret, cashier Union Bank of Louisiana.

82 To 3d: Nothing in our (bank) possession as syndic or comm'r or r'r of the Belleville Iron-Works Co. No money received by us as proceeds of property or otherwise in any amount. Never had any account of said co.'s as d'r or c'r.

4th: Never had any deposit or any property to cr. of said co., or of R. Wells, syndic, or comm'r, or rec'r, of said co.

5th: Nothing in our possession or under our control, in money or property, belonging to R. Wells, syndic, or R. Wells, comm'r, or R. Wells, rec'r. In fact, the three answers are No; and know nothing about any of the parties whatever.

(Signed) GEO. A. FRERET, *Cas'r.*

Sworn to and subscribed before me this 26th January, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of the La. State Bank, garnishee.—Filed January 26th, 1860.

United States circuit court, 5th circuit, eastern dist. of La.

HOLDANE & CO.
83 *vs.*
THE BELLEVILLE IRON-WORKS CO. } No. 3049.

And now comes the branch of the Louisiana State Bank, cited herein as garnishee, and for answer to the interrogatories propounded, saith:

To 1st interrogatory. No.
To 2d " No.
To 3d " No.
To 4th " No.
To 5th " No.

And, further answering, respondent says: The said branch bank is not indebted to the defendant or to R. Wells, syndic, commissioner, or receiver, and has nothing on deposit to the credit of either.

(Signed) R. J. PALFREY, *Cas'r.*

Sworn to and subscribed before me this 26th day of January, A. D. 1860.

(Signed) J. W. GURLEY, *Clk,*
By O. LAVISSON, *Dep. Clk.*

Answer of Mechanics & Traders' Bank, garnishee.—Filed January 26th, 1860.

84 HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3049.

To the honorable U. S. circuit court for the fifth circuit and eastern district of Louisiana:

Now comes into court, through its cashier, the Mechanics and Traders' Bank of New Orleans, a corporation created by the laws of the State of Louisiana, made garnishee herein, and to the interrogatories propounded herein, answer as follows, viz:

Int. 1st. We do not, and are not indebted unto them in any amount.
Int. 2d. We have not.
Int. 3d. We have in no capacity whatever.
Int. 4th. We have not.
Int. 5th. We have not.

(Signed) G. CROZAT.

Sworn to and subscribed before me this 26th of January, 1860.
(Signed) J. W. GURLEY, *Clerk*,
By O. LAVISSON, *D'y Clk.*

85 *Answer of Southern Bank garnishee—Filed 26th January*, 1860.

United States circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 3049.

Thomas Layton, cashier of the Southern Bank, made garnishee herein, now comes into court on behalf of said corporation, and answers as follows the interrogatories propounded to him:

To interrogatory 1st, he answers: No.
To " 2d, he answers: No.
To " 3d, he answers: No.
To " 4th, he answers: No.
To " 5th, he answers: No.

(Signed) THO'S LAYTON,
Cashier.

Sworn to and subscribed before me this 26th January, 1860.
(Signed) ARTHUR SAUCIER, *3d J. P.*

Answer of Bank of New Orleans, garnishee.—Filed Jan'y 27th, 1860.

86 To the hon. the circuit court of the United States in and for the eastern district of Louisiana.

To the garnishment served upon the Bank of New Orleans in the case of Holdane & Co. vs. Belleville Iron-Works, No. 3049, the said bank, through its president, Frank Williams, appears and answers on oath the interrogatories propounded, as follows:

To the 1st interrogatory he answers: No; the bank is not indebted to the Belleville Iron-Works.

To the 2d interrogatory: No; the bank has nothing in its possession belonging to the Belleville Iron-Works.

To the 3d interrogatory he answers: No.

To the 4th interrogatory, he answers: No.

To the 5th interrogatory, he answers: No; the bank has had no account or transactions with the Belleville Iron-Works, or Wells, or any other syndic or commissioner of the said iron-works.

(Signed) FRANK WILLIAMS,
Pres't B'k of New Orleans.

87 Sworn to and subscribed before me this 27th January, A. D. 1860.

(Signed) J. W. GURLEY, *Clerk.*
By O. LAVISSON, *D'y C'lk.*

Answer of Canal Banking Co., garnishee.—Filed January 30th, 1860.

U. S. circuit court for the 5th circuit and eastern district of Louisiana.

HOLDANE & Co.
vs.
THE BELLEVILLE IRON-WORKS Co. } No. 3049.

The New Orleans Canal and Banking Company, garnishee herein, for answer to the interrogatories to them propounded by the plaintiffs, answering through their president, H. A. Rathbone, answer and say:

1st. Answer to interrogatory No. 1. No; this corporation is not and was not, at the date of service of garnishment process on it herein, nor is it now, indebted to the said company in any amount whatever.

88 2d. Answer to interrogatory No. 2. No; this corporation had not, at the date of service of process of garnishment on it herein, nor has it had at any time since, nor has it now, any effects or funds whatever, or any rights or credits in its possession or control belonging to the said defendants, or in which their said company is interested, of any value whatever.

3d. Answer to interrogatory No. 3. No; has not and never had any amount whatever.

4th. Answer to interrogatory No. 4. No; has not and never had any amount of money or property whatever at any time since the service of garnishment process herein.

5th. Answer to interrogatory No. 5. No; has not and never had anything whatever at any time since the service of garnishment process herein.

(Signed) H. N. RATHBORNE,
Pres't New Orleans Canal & B'k'g Co.

Sworn to and subscribed before me on this 30th day of January, A. D. 1860.

(Signed) J. W. GURLEY, *Clerk,*
By O. LAVISSON, *D'y C'lk.*

89 *Answer of Bank of America, garnishee.—Filed February 2d,* 1860.

U. S. circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3049.

William G. Hewes, president of the Bank of America, herein made garnishee, now comes into court, in obedience to the order of this hon. court, and answers the interrogatories propounded to the said Bank of America as follows, to wit:

To interrogatory 1st: The Bank of America owes no sum of money whatever to the Belleville Iron-Works Company.

To interrogatory 2d: The Bank of America has in its possession, or under its control, no money, property, or credits of any kind whatever belonging to the Belleville Iron-Works Company, or in which they are interested, except such as may be included in the answer to interrogatory fourth.

90 To interrogatory 3d: The Bank of America has no such moneys in any such capacity in its possession.

To interrogatory 4th: The Bank of America has on deposit money but no other property, to the credit of "R. Wells, syndic of the estate of the Belleville Iron-Works Company." The same amounts to more than eight thousand dollars.

To interrogatory 5th: The Bank of America has in its possession or under its control no other money or property belonging to R. Wells, syndic, or to the said Wells in any other capacity than what is stated in the answer to interrogatory 4th.

(Signed) WILLIAM G. HEWES,
President.

Sworn to and subscribed before me this 2d February, 1860.
(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of the Bank of Louisiana, garnishee.—Filed February 2d, 1860.

U. S. circuit court.

91 HOLDANE & CO. *vs.* THE BELLEVILLE IRON-WORKS. } No. 3049.

The Bank of Louisiana comes, and denying the jurisdiction of the court in manner and form so exercised, and denying the power of said court to issue attachments in said manner and form, they answer to each and all of the five interrogatories in the negative.

(Signed) R. M. DAVIS,
Cashier.

Answer of E. T. Parker, sheriff, garnishee.—Filed February 4, 1860.

United States circuit court for the 5th circuit, eastern district of Louisiana.

HOLDANE & CO. *vs.* BELLEVILLE IRON-WORKS COMPANY. } No. 3049.

The answers of E. T. Parker to the several interrogatories therein to him propounded:

92 Answer to 1st interrogatory. No.
Answer to 2d interrogatory. No.
Answer to 3d interrogatory. No.
Answer to 4th interrogatory. No.

(Signed) E. T. PARKER,
Sheriff.

Sworn to and subscribed before me this 4th Feb'ry, 1860.
(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of R. Wells, garnishee.—Filed February 8th, 1860.

United States circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS COMPANY.

Now comes Richard Wells, made garnishee in the above suit, and being duly sworn, answers to the interrogatories propounded by said plaintiffs, as follows: 1, 2, 3, 4, & 5. To all the said plaintiffs interrogatories he answers "No."—Except as follows: I am acting as the syndic of the creditors of the said Belleville Iron-Works Company, having been elected as such syndic at a meeting of said creditors, convoked by
93 order of the judge of the fourth district court of New Orleans, in the case entitled "The Belleville Iron-Works Company vs. Their Creditors," No. , on the docket of said court, and having subsequently given bond and been recognized and confirmed in my said capacity by the court.

All the movables surrendered by the said company, and which were on the premises occupied by the company in Algiers, were sold under the order of the court in the above case by the sheriff of the parish of New Orleans, and the proceeds of such sale, amounting to a sum exceeding $12,000, are now in my hands, as syndic, or under my control, being on deposit in the Bank of America to my credit, as such syndic. After the said proceeds were received I filed an account and tableau of distribution in the said fourth district court, by which tableau all of the said proceeds are distributed to the creditors of the said company according to the classification of privilege and ordinary creditors therein
94 made, and by the judgment of the said court rendered on the 4th June, and signed on the 9th June, 1859, the said tableau has been approved and homologated, except so far as the same had been opposed.

The oppositions made to the said tableau are yet pending and undecided in the said court in the cause aforesaid.

But, except as herein stated, and in my official capacity as syndic, I have not in my possession nor under my control, any money, rights, or property of any kind belonging to said company, nor am I in any way indebted to the said company.

(Signed) R. WELLS.

Sworn to and subscribed before me this 6th February, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of Louisiana State Bank, garnishee.—Filed February 9th, 1860

U. S. circuit court.

HOLDANE & Co.
vs.
THE BELLEVILLE IRON-WORKS Co. } No. 3049.

95 And now comes the Louisiana State Bank, cited herein as garnishee, and for answer to the 1, 2, 3, 4, & 5th interrogatories, and to each of them respondent answers No.

(Signed) J. M. LAPEYRE, *Pres't.*

Affidavit to the answers of the garnishee waived.

(Signed) MOTT.

Rule.—Extract from the minutes.

Circuit court of the United States, fifth circuit and eastern district of Louisiana. April term, A. D. 1860.

NEW ORLEANS, *Friday, 25th day of May*, 1860.

Court met pursuant to adjournment.
Present, the Honorable J. A. Campbell, presiding judge.
Absent, the Honorable Theo. H. McCaleb, district judge.

HOLDANE & Co. *vs.* BELLEVILLE IRON-WORKS. } No. 3049.

96 HOLDANE & Co. *vs.* BELLEVILLE IRON-WORKS. } No. 3090.

On motion of Rob't Mott, esq., of counsel for the plaintiffs herein, it is ordered that the Bank of America and Richard Wells severally show cause on Saturday the 2d June, 1860, at 10 o'clock a. m., why they should not pay over to the marshal the money in their hands, in part satisfaction of the judgments rendered in these cases, on the grounds that the said money has been legally seized in their hands in these cases by garnishment process according to law.

Marshal's returns thereon.

Received May 26th, 1860, and on the same day served a copy of the within on the Bank of America, in the manner following, to wit, by handing the same to Mr. W'm G. Hewes, the president of said bank, at his office in this city.
Returned May 26th, 1860.
(Signed) JAMES GILLAN, *D'y U. S. Mar.*

97 Received this 26th day of May, 1860, and on the same day of May, 1860, served a copy of the same on Richard Wells, in the manner following, to wit, by handing the same to him, personally, in this city.
Returned May 28th, 1860.
(Signed) JAMES GILLAN, *D'y U. S. M.*

Submission of rule and order.—Extract from the minutes of Saturday, June 9th, 1860.

HOLDANE & Co. *vs.* BELLEVILLE IRON-WORKS Co. } Nos. 3049 and 3090.

The rule herein taken by the plaintiffs upon the garnishees was called for trial—plaintiffs' counsel absent; E. A. Bradford, esq., appearing for the defendants, in rule.
And the same was argued and submitted on part of the defendants, and left open for the plaintiffs' counsel to be heard.

98 *Order.—Extract from the minutes of Monday, June 11th, 1860.*

HOLDANE & CO. *vs.* BELLEVILLE IRON-WORKS. } Nos. 3049 and 3090.

The rule in this case taken upon the garnishees was argued by Robert Mott, on part of plaintiffs, and by E. A. Bradford on part of defendants, and taken under advisement.

Order.—Extract from the minutes of Thursday, 14th June, 1860.

HOLDANE & CO. *vs.* BELLEVILLE IRON-WORKS. } Nos. 3049 and 3090.

The court this day ordered that these cases be entered as continued under advisement.

Opinion of the court.—Filed November 10th, 1860.

In the circuit court of the United States, eastern district of La.

99 HOLDANE & CO. *vs.* BELLEVILLE IRON-WORKS.

THE SAME PLAINTIFFS *vs.* THE SAME DEFENDANTS.

RICHARD WELLS, BANK OF AMERICA, } Garnishees.

The plaintiffs recovered in this court in May, 1859, two judgments against the defendants, one for the sum of twenty-eight hundred and thirty-two $\frac{48}{100}$ dollars, besides interest and costs, and the other for the sum of fourteen hundred and fifty-five $\frac{95}{100}$ dollars, interest and costs as shown by the records of this court.

The plaintiffs in January of this year obtained from the court garnishee process directed to a number of persons supposed to be debtors of the defendants, and among others to Richard Wells and the Bank of America.

In July, 1860, the garnishees appeared and answered the inter-
100 rogatories addressed to them. From these answers it appears that the Belleville Iron-Works in December, 1858, became satisfied that it was insolvent, and, by a vote of the stockholders of the company, it determined to make a cession of its property for the benefit of its creditors. The stockholders unanimously resolved, "That no course remained for the company except to close its affairs, and to provide as far as possible for an equitable and legal distribution of its assets among its creditors, and that accordingly a statement of the assets and liabilities of the company be prepared and placed in the hands of the attorney of the company, with instructions to go in court with the company's business."

In accordance with this conclusion a petition was presented on behalf of the company, to the 4th district court of New Orleans, presenting a statement of the affairs of the company, representing its insolvent condition, and requesting a convocation of its creditors.

101 The cession of the property of the petitioner was accepted by that court, and the creditors convoked to meet at the office of a notary in New Orleans the 7th February, 1859, and to appoint a syndic. The creditors met according to the order of the judge, and appointed Robert W. Wells, syndic. The proceedings of this meeting were reported to the district court, and that report homologated, and the syndic regularly entered upon the duties of his appointment.

These proceedings were commenced and conducted under the act of the legislature of Louisiana, contained in the revised statutes p. 252, under the title of insolvent laws §§ 4, 5, &, &. The first section, under the title "voluntary surrender," is: "Any person may make a cession of his property to his creditors, provided the surrender be made bona-fide, without fraud, and agreeable to the formalities presented hereafter."

The 11th section dictates, that "From and after such cession and 102 acceptance, all the property of the insolvent debtor mentioned in the schedule, shall be fully vested in his creditors, and the syndic shall take possession of, and be entitled to claim and recover, all the property, and to administer and sell the same according to law."

The garnishee, Richard Wells, who was chosen syndic by the creditors, answers that all the movables on the premises occupied by the company, were sold under the order of the 4th district court, by the sheriff, and the proceeds of such sale, amounting to a sum exceeding $12,000, are now in his hands, as syndic, or under his control, being on deposit in the Bank of America, to his credit, as syndic. After the said proceeds were received, that he filed an account and tableau of distribution in the said 4th district court, by which tableau all of the said proceeds are distributed to the creditors of the said company according to the classification of privilege and ordinary creditors therein made, and by the judgment of the said court, rendered on the 9th June, 1857, the 103 said tableau has been approved and homologated, except so far as the same has been opposed. The oppositions made to the said tableau are yet pending and undecided in the said court in the cause aforesaid. The garnishee denies having any other moneys or effects in which the defendants have any concern. The Bank of America admits that there is on deposit, to the credit of the syndic, more than $3,000.

Upon these facts, which appear from documents on file, the garnishees move for their discharge, while the plaintiffs in the judgment move for a judgment for the amount of their debt.

If there were no other fact in this cause besides those I have mentioned, it is clear that the plaintiffs could not have a judgment. It has been frequently decided in this court that its process could not be executed upon money or property which was in the custody of the State courts, and that property in the hands of a syndic, under the insolvent laws, could not be seized upon an execution against the insolvent 104 issued from this court after the acceptance of the cession. Bank of Tennessee vs. Horn, 17th How., 157.

The fact that embarrasses this case is, that the Belleville Iron-Works is a corporation created under the laws of Louisiana, and such bodies are not included within the scope of the insolvent system of the State. This was determined by the supreme court of the State in a case in which this corporation was concerned, and the validity of the cession before

stated was in question. In Jeffrey vs. Belleville Iron-Works (Jan'y, 1860) that court say: "We are of opinion that the term 'persons' in the first section of the act of the legislature refers to natural persons alone, and that it was not the intention of the legislature to include under the denomination the artificial or legal person which is the subject of the 10th title of the first book of the Civil Code. * * * * * . It is manifest from this language that our predecessors did not consider that a corporation was entitled to make a cession of property under the insolvent laws then in force, and which, as we have seen, were substantially
105 the same with that under which the defendants made the application to the 4th district court."

The effect of this decision is to deny the jurisdiction of the 4th district court over the subject-matter, and to deprive its decrees of any obligatory force in reference to it.

Assuming that the proceedings were not warranted by the statute, the question occurs, What is the effect of the voluntary action of the corporation? Must we consider that the resolutions of the corporation, the votes of the creditors, the administration of the syndic are inoperative, and have vested no rights? Can we decide that the money in the hands of the syndic belongs to the corporation, and is subject to seizure by any creditor?

This money was collected from the sale of property which the corporation designed to cede to its creditors. It is held by the syndic for the creditors at large. A portion of the creditors have participated in all the proceedings which resulted in this collection. My present
106 impression is that the money held by the syndic is for the common benefit of all the creditors according to a legal classification as privileged or ordinary, and that the plaintiffs would be entitled to a pro-rata share. But I am disposed to withhold any judgment for the present until it shall be seen what course the State courts will take in the matter. I do not apprehend that any course will be adopted there in which the rights of these plaintiffs will be disregarded. I think it more consistent with that amity which habitually prevails in the relations between the State and Federal tribunals to abstain from making any order against the syndic until he shall be released or discharged from his obligations in the State court, or until the action of the State court be made known.

The order of the court is, that the two causes be continued, with liberty to the plaintiffs to move against the garnishees, Richard Wells and the Bank of America, as they shall hereafter be advised.

107 (Signed) J. A. CAMPBELL,
Asso. Justice of the Supreme Court of the U. S.

Order.—Extract from the minutes of Saturday, November 10, 1860.

HOLDANE & CO. *vs.* BELLEVILLE IRON-WORKS. } Nos. 3049 and 3090.

Opinions in these causes were this day received from Hon. J. A. Campbell, presiding judge. Whereupon it was ordered that the same be filed, and that orders and decrees be entered in conformity thereto.

Rule on Bank of America, garnishee.—Extract from the minutes.

Circuit court of the United States, 5th circuit and district of Louisiana. November term, A. D. 1866.

NEW ORLEANS, *Tuesday, 12th day of February*, 1867.

108 Court met pursuant to adjournment. Present, the Honorable E. H. Durell, district judge.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS CO. } Nos. 3049 & 3090.

On motion of Robert Mott, of counsel for plaintiff, it is ordered that the Bank of America, made garnishees in the above two cases, show cause on Monday next, the 18th instant, at 11 o'clock a. m., why the said Bank of America shall not pay the amount of the judgments rendered in the said two cases, with all interest and costs and the costs of this rule.

Marshal's return.

Received February 13th, 1867, and same day served a copy of the within rule at the office of said bank, corner of Exchange Place and Canal street, in the hands of A. M. Fortier, the president of said bank.
New Orleans, February 14th, 1867.
(Signed) M. EGAN,
D'y U. S. Mar'l.

109 *Rule and grounds by James Jeffries, intervenor.—Extract from the minutes of Thursday, February* 14, 1867.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS. } No. 3049 & 3090.

On motion of L. E. Simonds, att'y of James Jeffries, citizen of Pennsylvania, and on suggesting that said Jeffries is a judgment creditor of the defendant, the Belleville Iron-Works, for over $13,000 including interest, by virtue of three judgments for over $3,000 each, besides interest rendered in suits No. 3226 of this court, and Nos. 12851 and 12939 in the fourth district court of New Orleans; and on further suggesting that under executions on each of said judgments this mover has seized the funds in the hands of the Bank of America by garnishment process, it is ordered that this mover have leave to intervene and to make his opposition in the rule taken herein by Holdane & Co., on 12th inst.,
110 and that Holdane & Co. and the Bank of America show cause on the trial of said rule why the whole amount in said bank to the credit of the Belleville Iron-Works, or R. Wells as syndic, should not be paid to this mover in preference to Holdane & Co. on the grounds filed.

Grounds.—Filed February 14, 1867.

1st. That Holdane & Co. have taken no steps to set aside or annul the transfer or assignment of its property made by the defendant herein for the benefit of its creditors generally, and under which the property and monies, &c., were delivered to R. Wells, the agent selected by the majority of the creditors.

2d. That this intervenor has, by vigilance and at great expense, in-

stituted proceedings in the State courts, and caused the said assignment or surrender to be annulled in his favor and so far as related to him, and is entitled to the benefit thereof.

Service accepted, all objections reserved except as to service.

New Orleans, 14 Febr'y, 1867.

111 (Signed) R. MOTT,
For Holdane.

Marshal's return thereon.

Received February 15, 1867, and same day, month, and year served a copy of the within intervention on the Bank of America, at their banking-house, corner of Exchange Place and Canal street, in this city, in the hands of John Arnontamat, the cashier of said bank.

(Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *February* 15, 1867.

Continuance of rule.—Extract from the minutes of Monday, March 4, 1867.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS. } Nos. 3049 & 3090.

The rule herein returnable to-day was called, and ordered to be continued indefinitely.

Discontinance of intervention and opposition of Ja's Jeffries.—Extract
112 *from the minutes of Friday, June* 7, 1867.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } Nos. 3049 & 3090.

On motion of L. E. Simonds, att'y of James Jeffries, it is ordered that the intervention and opposition of said Jeffries, filed herein on February 14, 1867, be discontinued.

RECORD NO. 3090 OF THIS COURT OFFERED IN EVIDENCE BY HOLDANE & Co., ON 5TH JULY, 1867.

Petition and note.—Filed April 13, 1859.

To the honorable the United States circuit court for the fifth circuit & eastern district of Louisiana.

The petition of Holdane, who compose the commercial firm of Holdane & Co., and reside and trade in the city of New York,
113 shews, that petitioners are citizens of the State of New York, and that the Belleville Iron-Works is a corporation created by and in virtue of the laws of the State of Louisiana, citizens of Louisiana, and domiciliated in the city of New Orleans; that said Belleville Iron-Works is justly and truly indebted to petitioners in the sum of fourteen hundred and fifty-five $\frac{95}{100}$ dollars with interest from the 12th April, 1859, at five per centum per annum until paid, for this, that petitioners are the

holders and owners of the annexed promissory note which is made part hereof; that amicable demand has been made, and payment refused. Wherefore petitioners pray that the said Belleville Iron-Works, through its president, be cited to answer hereto, and be condemned to pay petitioners the said sum of $1,455.95 dollars with interest as aforesaid, and costs of suit, and for general relief, &c.

(Signed) MOTT & FRASER, *Att'ys.*

Note.

$1,455.95.] BELLEVILLE IRON-WORKS COMPANY,
New Orleans, 9 *January*, 1858.

114 Fifteen months after date we promise to pay to the order of Messrs. Holdane & Co., at Citizens' Bank, N. Orleans, fourteen hundred and fifty-five $\frac{95}{100}$ dollars; value received, with current exchange on New York.

(Signed) R. WELLS, *President pro tem.*
(") B. FALLON, *Secretary.*

Citation—Issued 13th April, 1859.

HOLDANE & CO. vs. BELLEVILLE IRON-WORKS. } No. 3090.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon the Belleville Iron-Works, a corporation created by the laws of the State of Louisiana, to comply with the demand of Holdane & Co., citizens of the State of New York, contained in the petition, of which a copy accompanies this cita-
115 tion, or to deliver their answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against them by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of May, 1859.

Witness the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 13th day of April, A. D. one thousand eight hundred and fifty-nine, and of the independence of the United States of America the eighty-third year.

[SEAL.] (Signed) J. W. GURLEY, *Clerk.*

Marshal's return.

Received this 13th day of April, 1859, and on the 14th day of April, 1859, served copies of the within citation, plaintiff's petition, and
116 documents annexed on the within-named Belleville Iron-Works, in the manner following, to wit, by handing the same to J. J. Person, president of said Belleville Iron-Works, in person, in the city of New Orleans, and on the same day returned this writ into court.

(Signed) CH'S CATOIR, *D'y Mar.*

Disclaimer of J. J. Person.—Filed April 28th, 1859.

U. S. circuit court.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS.

Now comes J. J. Person, of said New Orleans, cited herein as president of said Belleville Iron-Works, and, disclaiming all capacity to act as president of said company, or to represent it in any way, this appearer respectfully represents to this honorable court that, in pursuance of a resolution passed at a meeting of the stockholders on the 15th December, 1858, the said company, in view of its insolvent condi-
117 tion, made a cession of its property to its creditors, in the suit entitled "The Belleville Iron-Works Company vs. Its Creditors," No. 12890, on the docket of the 4th district court of New Orleans; that the said cession was duly accepted, and a syndic appointed, who alone has authority to represent the said company.

That, in consequence of said proceedings, the said company has ceased to exist as a corporation, and this appearer has no longer the capacity of president of said company, either in fact or law.

Wherefore, this appearer prays to be hence dismissed with costs, &c.

(Signed) BENJAMIN, BRADFORD & FINNEY,
For J. J. Person.

Judgment.

Circuit court of the United States, fifth circuit and eastern district of Louisiana, April term, 1859.

NEW ORLEANS, *Wednesday, 11th May*, 1859.

118 Court met pursuant to adjournment—present, Hon. J. A. Campbell, presiding judge; present, Hon. Theo. H. McCaleb, district judge.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS CO. } No. 3090.

This cause came on to be heard, and was argued by counsel. On consideration whereof, and by reason of the law and the evidence, it is ordered, adjudged, and decreed that the plaintiffs, Holdane & Co., do have and recover judgment against the defendant, the Belleville Iron-Works Company, for the sum of fourteen hundred and fifty-five dollars and ninety-five cents, with interest thereon at the rate of five per cent. per annum from the 12th April, 1859, till paid, and costs of suit.

Judgment rendered 11th May, 1859. Judgment signed 16th May, 1859.

(Signed) J. A. CAMPBELL,
Asso. Justice S. C. U. S.

Supplemental petition and order.—Filed November 21st, 1859.

119 To the honorable the United States circuit court for the fifth circuit and eastern district of Louisiana.

The petition of Holdane & Co., a commercial firm, the members of whom reside in the city and State of New York, of which State they are

citizens, respectfully shews: That petitioners obtained a final judgment, on the eleventh day of May, 1859, in the suit No. 3090 on the docket of this honorable court, against the Belleville Iron-Works, a corporation, citizen of the State of Louisiana, for the sum of fourteen hundred and fifty-five dollars and ninety-five cents, with interest at the rate of five per centum per annum from the 12th April, 1859, until paid, and costs of suit; that execution has been issued for the amount of said judgment, and is now in the hands of the marshal of this district; that petitioners are informed that F. W. C. Cook and Bernard Fallon, severally, owe the said defendant money, or they or either of them hold or possess property of some kind belonging to or in which said defendant is interested.

120 Wherefore, petitioners pray that the said F. W. C. Cook and Bernard Fallon, severally, be made garnishees, served with a copy of this petition, cited to answer hereto, ordered to answer under oath the annexed interrogatories, and be condemned to pay the amount of the aforesaid judgment, interest, and costs out of the funds in their hands; and to deliver to the marshal, in satisfaction of said execution, all the property, rights, and credits in their possession or under their control belonging to or in which defendant is interested.

And that petitioners be decreed a privilege on the property seized, and for costs and general relief, &c.

(Signed) MOTT & FRASER, *Att'ys.*

Interrogatories to be answered by F. W. C. Cook and Bernard Fallon, severally garnishee, under oath.

First. Do you owe the said Belleville Iron-Works Company, defendant as aforesaid, any sum of money? If yea, does the same
121 amount to the sum of ten thousand dollars? If not to that sum, in what amount are you indebted to said company?

Second. Have you, in your possession or under your control, any money, property, rights, or credits of any kind or description belonging to the Belleville Iron-Works Company, the said defendant, or in which said company was or is in any way interested? If yea, does the value of the same amount to the sum of ten thousand dollars? If not to that sum, state what less value the same is of.

3d. Were you not stockholders in the Belleville Iron-Works? If yea, in what amount?

4th. Did you pay up the amount of your subscription to said stock? Do you not owe, on your said subscription to said stock, a sum amounting to ten thousand dollars?

5th. Have you, in any way, paid your subscription to the stock of said company? If yea, how did you pay it; and when did you pay it?

(Signed) MOTT & FRASER, *Att'ys.*

Order.—New Orleans, November 21st, 1859.

122 Let this be filed, and let F. W. C. Cook and Bernard Fallon be made party garnishees, and cited to answer hereto, and answer under oath and in writing the foregoing interrogatories:

(Signed) THO'S H. McCALEB,
U. S. Judge.

Fi. Fa.—Issued November 21st, 1859.

Circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from the Belleville Iron-Works Co. the sum of twenty-eight hundred and thirty-two dollars and forty-eight cents, with interest at the rate of five per cent. per annum, upon fourteen hundred and three dollars thereof, from 12th October, 1858, until paid, and like interest on the remaining sum of fourteen hundred and twenty-nine dollars and forty-eight cents
123 from 12th day of January, 1859, till paid, and three dollars and fifty cents costs of protest, and costs of suit.

Clerk's costs	$23 40
Marshal' "	6 00
Attorney's fees	10 00

—and the costs for executing this writ, cash, which Holdane & Co. lately recovered by judgment of the circuit court of the United States for the fifth circuit and eastern district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Belleville Iron-Works Co., except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate, exclusive of slaves, cannot be found in your district, that then you cause the same to be made out of the real estate and slaves of the said Belleville Iron-Works Co., in your district, whereof the said corporation or company were owners on the sixteenth day May, into whose hands soever the same may have come, and that you have those moneys
124 before our said court, to render to the said Holdane & Co., for the judgment aforesaid, on the seventieth day from this date, together with this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 21st day of November, A. D. 1859, and eighty-fourth year of the independence of the United States.

(Signed) J. W. GURLEY, *Clerk*,
By O. LAVISSON, *Dep. Clerk*.

Received November 2d, 1859, and being unable to find the defendants or any property belonging to said defendants, I return this writ of fi. fa. not satisfied.

Returned March 9th, 1860.

(Signed) CH'S CATOIR, *D'y Mar.*

Answer of B. Fallon, garnishee.—Filed December 1st, 1859.

U. S. circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3090.

125 Bernard Fallon, made garnishee herein, being duly sworn, answers to the interrogatories of the said plaintiffs as follows:

1st. To the first interrogatory: I was a stockholder in the Belleville Iron-Works Company to the amount of $25,000, (twenty-five thousand dollars.)

2d. To the second interrogatory: I have paid up the amount of my subscription as hereafter stated. I do not owe anything on that account, and I have not in my possession or under my control any property or slaves whatever belonging to the said company.

3d. To the third interrogatory: At the organization of the said company the subscription to stock was settled as follows: ⅓th in cash, and the balance in notes which were then given, payable respectively the 9–12 June, 9–12 September, & 9–12 December, 1867, and 9–12 March, 1858. I made the cash payment on account of my subscription of $5,000, and also took up three of my subscription notes at maturity, say, together, $15,000.

The other and last note of $5,000 I was unable to pay; and, conse-
126 quently, on the 15th December, 1858, I applied to the company, representing my insolvent condition, and offering to pay $500 in full settlement of my note for $5,000. This proposition having been accepted, the payment of $500 was made in full discharge of my note as aforesaid, which was accordingly given up and returned to me and cancelled.

(Signed) B. FALLON.

Sworn to and subscribed before me this first of December, A. D. 1859.

(Signed) J. W. GURLEY,
Clerk of U. S. Circuit Court, E. D. of La.,
By O. LAVISSON, *Dep. Clerk.*

Answer of F. W. C. Cook, garnishee.—Filed December 2d, 1859.

U. S. circuit court.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS CO. } No. 3090.

Answers of F. W. C. Cook, garnishee, to the interrogatories herein propounded to him.

127 To 1st interrogatory: I did owe to the Belleville Iron-Works Company the sum of twenty thousand dollars, being the amount of four notes of five thousand dollars each, drawn by me, and, as far as I can recollect, (having kept no memorandum of said notes,) drawn to my own order, and by myself endorsed, payable respectively at three, six, nine, and twelve months from the 9th March, 1857. Said notes are, I presume, in the possession of the syndic or liquidators of the company, unless they have been negotiated. I still owe said notes, but I do not know in whose possession they now are.

To 2d interrogatory: No.

To 3d interrogatory: Yes, in the sum of $25,000 of which $5,000 were paid for me by B. Fallon, and charged by him in account. The notes referred to in my first answer were furnished by me for the balance of my subscription.

To 4th interrogatory: No; as stated in my preceeding answer, I owe the amount of the four notes of five thousand dollars each, but I do not know who holds the said four notes, amounting together to the sum of twenty thousand dollars.

128 To 5th interrogatory: No; except five thousand dollars, as above stated, leaving a balance of $20,000 to the holders of said four notes, whoever they may be; said notes having been furnished by me for my subscription of 250 shares of the capital stock of the said Belleville Iron-Works Company, at one hundred dollars per share.

(Signed) F. W. C. COOK.

Sworn to and subscribed before me this 2d day of December, 1859.

(Signed) J. W. GURLEY, *Clerk*,
By O. LAVISSON, *Dep. Clk.*

Supplemental petition and order.—Filed 23d January, 1860.

To the honorable the United States circuit court for the fifth circuit and eastern district of Louisiana.

The petition of Holdane & Co., who reside in New York, of which State they are citizens, respectfully shews, that petitioners obtained a final judgment on the 16th May, 1859, in the suit No. 3090, on the docket
129 of this honorable court against Belleville Iron-Works Company, for the sum of 1,455 $\frac{95}{100}$ dollars, with interest at the rate of 5 per centum per annum from the 12th day of April, 1859, until paid, dollars costs of protest, and costs of suit.

That execution has been issued for the amount of said judgment, and is now in the hands of the marshal of this district.

That petitioners are informed that R. Wells, The Bank of Louisiana, The Louisiana State Bank, The Bank of America, The Union Bank, The Canal Bank, The Citizens' Bank, The Mechanics and Traders' Bank, The Bank of New Orleans, Merchants' Bank, the Branch of The Louisiana State Bank, and The Southern Bank owe the said defendant money, or hold or possess property of some kind belonging to or in which said defendants are interested.

Wherefore petitioners pray that the said R. Wells, and the said banks and banking corporations be made garnishee, served with a copy
130 of this petition, cited to answer hereto, ordered to answer under oath the annexed interrogatories, and be condemned to pay the amount of the aforesaid judgment, interest, and cost, out of the funds in their hands; and to deliver to the sheriff in full satisfaction of said execution all the property, rights, and credits in their possession or under their control belonging to or in which defendants are interested.

And that petitioner be decreed a privilege on the property seized, and for costs and general relief, &c.

(Signed) MOTT & FRASER, *Att'ys.*

Interrogatories to be answered by the aforesaid garnishees, under oath.

First. Do you owe the said Belleville Iron-Works Company, defendant, as aforesaid. any sum of money? If yea, does the same amount to the sum of three thousand dollars? If not to that sum, in what amount are you indebted to said Belleville Iron-Works Company?

Second. Have you in your possession or under your control
131 any money, property, rights, or credits of any kind or description belonging to the Belleville Iron-Works Company, the said defendant, or in which they are in any way interested? If yea, does the value of the same amount to the sum of three thousand dollars? If not to that sum, state to what less value the same is of.

Third. Have you in your possession, as syndic, or commissioner, or receiver of the Belleville Iron-Works Company, any money received by you, as the proceeds of the property sold under the order of the 4th district court of New Orleans, and does the same amount to three thousand dollars or any less sum?

4th. Have you on deposit any sum of money, or any property to the credit of the Belleville Iron-Works Company, or of R. Wells, syndic, or R. Wells, commissioner, or R. Wells, receiver of the said Belleville Iron-Works Company? If yea, does the same amount to three thousand dollars or any less sum?

5th. Have you in your possession or under your control any
132 money or property belonging to R. Wells, syndic, or R. Wells, commissioner, or R. Wells, receiver? If yea, does the same amount to three thousand dollars? If not, to what less sum does it amount?

(Signed) MOTT & FRASER, *Att'ys.*

Order.

Let this be filed, and let the parties herein named be made garnishees, and cited to answer under oath and in writing the interrogatories herein propounded within the legal delay.

New Orleans, January 23d, 1860.

(Signed) THE'O H. McCALEB,
U. S. Judge.

Supplemental petition & order.—Filed January 25th, 1860.

To the honorable the U. S. circuit court for the 5th circuit & eastern district of Louisiana:

The petition of Holdane & Co., who reside in New York, of which State they are citizens, respectfully shews that petitioners obtained a final judgment on the 16th May, 1859, in the suit No. 3090, on the docket of this honorable court, against the Belleville Iron-Works Com-
133 pany, a citizen of the State of Louisiana, for the sum of 1,455 $\frac{95}{100}$ dollars, with interest at the rate of five per centum per annum, from the 12th day of April, 1859, until paid, and costs of suit.

That execution has been issued for the amount of said judgment, and is now in the hands of the marshal of this district.

That petitioners are informed that E. T. Parker, a citizen of the State of Louisiana, owes the said defendants money, or holds or possesses property of some kind belonging to, or in which said defendants are interested.

Wherefore petitioners pray that the said E. T. Parker be made garnishee, served with a copy of this petition, cited to answer hereto, ordered to answer under oath the annexed interrogatories, and be condemned to pay the amount of the aforesaid judgment, interest, and costs out of the funds in his hands, and to deliver to the marshal, in full satisfaction of said execution, all the property, rights, and credits in his possession, or under his control, belonging to, or in which de-
134 fendants are interested.

And that petitioners be decreed a privilege on the property seized, and for costs and general relief, &c.

(Signed) MOTT & FRASER, *Att'ys.*

Interrogatories to be answered by E. T. Parker, garnishee, under oath.

First. Do you owe the said Belleville Iron-Works Company, defendants as aforesaid, in any capacity whatsoever, any sum of money? If yea, does the same amount to the sum of three thousand dollars? If not to that sum, in what amount are you indebted as aforesaid to the said Belleville Iron-Works Company?

Second. Have you in your possession or under your control any money, property, rights, or credits of any kind or description belonging to the said Belleville Iron-Works Company, the said defendants, in any capacity whatsoever, or in which they are in any way interested? If yea, does the value of the same amount to the sum of three thousand dollars? If not to that sum, state what less value the same is of?

135 3d. Have you in your possession, in any capacity whatsoever, any money belonging to the said Belleville Iron-Works Company, as the proceeds of the property of said company sold under the order of the 4th district court of New Orleans? If yea, does the same amount to three thousand dollars, or any less sum?

4th. Have you in your possession or under your control any money or property belonging to "R. Wells, receiver," or "R. Wells, syndic," or "R. Wells, commissioner?" If yea, does the same amount to three thousand dollars? If not, to what less sum does it amount?

(Signed) MOTT & FRASER, *Att'ys.*

Order.

Let this be filed, and let E. T. Parker be made party garnishee hereto, and cited to answer the interrogatories herein propounded, under oath and in writing, within the legal delay.

New Orleans, January 25th, 1860.

(Signed) THEO. H. McCALEB,
U. S. Judge.

136 *Answer of Citizens' Bank, garnishee.—Filed 26th January*, 1860.

United States circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 3099.

The answer of the Citizens' Bank of Louisiana to the interrogatories herein propounded.

To the 1st int.: No.
To the 2d int.: No.
To the 3d int.: No.
To the 4th int.: No.
To the 5th int.: No.

(Signed) JAME' D. DENEGRE, *Pres't.*

Sworn to and subscribed before me this day, January 26th, 1860.

(Signed) ARTHUR SAUCIER, *3d J. P.*

Answer of Merchants' Bank, garnishee.—Filed 25th January, 1860.

To the honorable United States circuit court for the fifth circuit and eastern district of Louisiana:

137 HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3090.

In the above-cited case, to the interrogatories filed, I, W'm S. Mount, cashier of the Merchants' Bank, on behalf of said institution, answer to to each and every interrogatory, No.

(Signed) W'M S. MOUNT.

Sworn to and subscribed before me this 26th Jan'y, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of Union Bank, garnishee.—Filed 26th January, 1860.

U. S. circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3090.

Answers to interrogatories by Geo. A. Freret, cashier Union Bank of Louisiana.

To 3d: Nothing in our (bank) possession as syndic, or commis-
138 sioner, or rec'r of the Belleville Iron-Works Co. No money received by us, as proceeds of property or otherwise, in any amount. Never had any account of said co. as dr. or cr.

To 4th: Never had any deposit or any property to cr. of said co., or of R. Wells, syndic, or comm'r, or rec'r of said co.

To 5th: Nothing in our possession or under our control in money or property belonging to R. Wells, syndic, or R. Wells, comm'r, or R. Wells, rec'r. In fact, the three answers are, No, and know nothing about any of the parties whatever.

(Signed) GEO. A. FRERET, *Cashier.*

Sworn to and subscribed before me this 26th January, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer af Louisiana State Bank, garnishee.—Filed January 26th, 1860.

U. S. circuit court, eastern dist. of L'a.

139 HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3090.

And now comes the branch of the Louisiana State Bank, cited herein as garnishee, and for answer to the interrogatories propounded saith: To the 1st, 2d, 3d, 4th, and 5th interrogatories, and to each of them, respondents answers, No.

And respondent, further answering, saith that the said Branch Bank is not indebted to the defendant, or to R. Wells, receiver, syndic, or commissioner, and has nothing on deposit to the credit of either.

(Signed) R. J. PALFREY, *Cas'r.*

Sworn to and subscribed before me this 26th day of January, A. D. 1860.

(Signed) J. W. GURLEY, *Clk.*
By O. LAVISSON, *D'y Clk.*

Answer of Mechanics & Traders' Bank, garnishee.—Filed January 26th, 1860.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS CO. } No. 3090.

140 To the honorable U. S. circuit court for the 5th circuit and eastern district of Louisiana:

Now comes into court, through its cashier, the Mechanics & Traders Bank of New Orleans, a corporation created by the laws of the State of Louisiana, made garnishee herein, and to the interrogatories herein propounded answers as follows, viz:

Int. 1st. We do not; and are not indebted unto them in any amount.
Int. 2d. We have not.
Int. 3d. We have in no capacity whatever.
Int. 4th. We have not.
Int. 5th. We have not.

(Signed) G. CROZAT.

Sworn to and subscribed before me on this 26th January, 1860.

(Signed) J. W. GURLEY, *Clerk.*
By O. LAVISSON, *D'y Clk.*

Answer of Southern Bank, garnishee.—Filed January 26th, 1860.

United States circuit court.

HOLDANE & CO.
vs.
141 BELLEVILLE IRON-WORKS CO. } No. 3090.

Thomas Layton, cashier of the Southern Bank, made garnishee herein, now comes into court on behalf of said institution, and answers as follows the interrogatories propounded to him:

To interrogatory 1st, he answers: No.
To interrogatory 2d, he answers: No.
To interrogatory 3d, he answers: No.
To interrogatory 4th, he answers: No.
To interrogatory 5th, he answers: No.

(Signed) THO'S LAYTON, *Cashier.*

Sworn to and subscribed before me this 26th day of January, 1860.

(Signed) ARTHUR SAUCIER, *3d J. P.*

Answer of Bank of New Orleans, garnishee.—Filed January 27th, 1860.

U. S. circuit court for eastern district of Louisiana.

HOLDANE & CO.
vs.
BELLEVILLE IRON-WORKS. } No. 3090.

To the garnishment filed in the above case, against the Bank
142 of New Orleans, the said bank appears by its president, Frank Williams, who answers on oath the interrogatories propounded as follows:

To the 1st int., he answers: No.
To the 2d " " " No.
To the 3d " " " No.
To the 4th " " " No.
To the 5th " " " No.

The bank has had no transactions or account with the said Belleville Iron-Works, or the said Wells, or any other commissioner or syndic of the said iron-works.

(Signed) FRANK WILLIAMS,
Pres' B'k of New Orleans.

Sworn to and subscribed before me this 27th January, 1860.
(Signed) J. W. GURLEY, *Clerk.*
By O. LAVISSON, *Dep. Clk.*

Answer of Canal and Banking Company, garnishee.—Filed January 30th, 1860.

U. S. circuit court for the 5th circuit and eastern district of Louisiana.

HOLDANE & CO.
vs.
143 THE BELLVILLE IRON-WORKS CO. } No. 3090.

The New Orleans Canal and Banking Company, garnishee herein, for answer to the interrogatories to them propounded by the plaintiff, answering through the president, H. A. Rathbone, answer and say:

1st. Answer to interrogatory No. 1. No. This corporation is not and was not at the date of service of garnishment process on it herein, nor has it been at any time since, nor is it now, indebted to the said company in any amount whatever.

2d. Answer to interrogatory No. 2. No. This corporation had not at the date of service of process of garnishment on it herein, nor has it had at any time since, nor has it now, any effects or funds whatever, or any rights or credits in its possession or control belonging to the said defendants, or in which their said company is interested, of any value whatever.

3d. Answer to interrogatory No. 3. No; has not and never had any amount whatever.

144 4th. Answer to interrogatory No. 4. No; has not any; never had any amount of money or property whatever at any time since the service of garnishment process herein.

5th. Answer to interrogatory No. 5. No; has not and never had anything whatever, since the service of garnishment process herein.

(Signed) H. A. RATHBONE,
Pres't New Orleans Canal & B'k'g Co.

Sworn to and subscribed before me on this 30th day of January, A. D. 1860.

(Signed) J. W. GURLEY, *Clerk.*
By O. LAVISSON, *Dep. Clerk.*

Answer of Bank of America, garnishee.—Filed February 2d, 1860.

U. S. circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3090.

William G. Hewes, president of the Bank of America, herein made garnishee, now comes into court, in obedience to the order of this hon. court, and answers the interrogatories propounded to the said Bank of America as follows, to wit:

145 To interrogatory 1st: The Bank of America owes no sum of money whatever to the Belleville Iron-Works Company.

To interrogatory 2d: The Bank of America has in its possession or under its control no money, property, or credits of any kind whatever belonging to the Belleville Iron-Works Company, or in which they are interested, except such as may be included in the answer to interrogatory fourth.

To interrogatory 3d: The Bank of America has no such moneys in any such capacity in its possession.

To interrogatory 4th: The Bank of America has on deposit money, but no other property, to the credit of "P. Wells, syndic of the estate of the Belleville Iron-Works Company." The same amounts to more than three thousand dollars.

To interrogatory 5th: The Bank of America has in its possession, or under its control, no other money or property belonging to R. Wells,

146 syndic, or to the said Wells in any other capacity than what is stated in the answer to interrogatory 4th.

(Signed) WILLIAM G. HEWES,
President.

Sworn to and subscribed before me this 2d February, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of the Bank of Louisiana, garnishee.—Filed February 2d, 1860.

U. S. circuit court.

HOLDANE & Co.
vs.
THE BELLEVILLE IRON-WORKS Co. } No. 3090.

The Bank of Louisiana comes, and denying the jurisdiction or power of the circuit court over them in manner and form so exercised, and the power to issue attachment process, they answer to each and all of the five interrogatories in the negative.

(Signed) R. M. DAVIS, *Cashier.*

Answer of E. T. Parker, sheriff, garnishee.—Filed February 4th, 1860.

147 United States circuit court, eastern district of Louisiana.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co. } No. 3090.

The answers of E. T. Parker to the several interrogatories herein to him propounded:

Answer to 1st interrogatory. No.
Answer to 2d interrogatory. No.
Answer to 3d interrogatoy. No.
Answer to 4th interrogatory. No.

(Signed) E. T. PARKER. *Sheriff.*

Sworn to and subscribed before me this 4th February, 1860.

(Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of R. Wells, garnishee.—Filed February 8th, 1860.

U. S. circuit court.

HOLDANE & Co.
vs.
BELLEVILLE IRON-WORKS Co.

148 Now comes Richard Wells, made garnishee in the above suit, and being duly sworn, answers to the interrogatories propounded by said plaintiffs as follows: 1, 2, 3, 4, & 5. To all the said plaintiff's interrogatories he answers "No," except as follows: I am acting as the syndic of the creditors of the said Belleville Iron-Works Company; having been elected as such syndic, at a meeting of said creditors convoked by the order of the judge of the fourth district court of New Orleans in the case entitled "The Belleville Iron-Works Company vs. Their Creditors," No. , on the docket of said court, and having subsequently given bond, and been recognised and confirmed in my said capacity by the court, all the movables surrendered by the said company, and which were on the premises occupied by the company, in Algiers, were sold under the order of the court in the above case, by the sheriff of the parish of New Orleans, and the proceeds of such sale, amounting to a sum exceeding $12,000, are now in my hands, as syndic, or under my control, being on deposit in the Bank of America, to my
149 credit, as such syndic. After the said proceeds were received, I filed an account and tableau of distribution, in the said fourth district court; by which tableau all of the said proceeds are distributed to the creditors of the said company according to the classification of privilege and ordinary creditors therein made, and by the judgment of the said court, rendered on the 4th June, and signed on the 9th June, 1859, the said tableau has been approved and homologated, except so far as the same has been opposed. The oppositions made to the said tableau are yet pending and undecided in the said court in the case aforesaid. But except as herein stated, and in my official capacity as syndic, I have not in my possession nor under my control any money, rights, or

property of any kind belonging to said company, nor am I in any way indebted to the said company.

(Signed) R. WELLS.

Sworn to and subscribed before me this 6th February, 1860.

150 (Signed) J. W. GURLEY,
U. S. Comm'r.

Answer of Louisiana State Bank, garnishee.—Filed February 9th, 1860.

U. S. circuit court.

HOLDANE & Co.
vs.
THE BELLEVILLE IRON-WORKS Co. } No. 3090.

And now comes the Louisiana State Bank, cited herein, as garnishee, and answers to the 1st, 2d, 3d, 4th, & 5th interrogatories, and to each of them, No.

(Signed) J. M. LAPEYRE, *Pres't.*

Affidavit to the answers of the garnishee waived.

(Signed) MOTT.

Motion and order—Extract from the minutes of May 25th, 1860.

NOTA: To be found transcribed at page 95.

151 *Marshal's return thereon.*

NOTA.—To be found transcribed at page 95.

Submission and order.—Extract from the minutes of June 9th, 1860.

NOTA.—To be found transcribed on page 97.

Submission.—Extract from the minutes of June 11th, 1860.

NOTA.—To be found transcribed at page 98.

Order.—Extract from the minutes of June 14th, 1860.

NOTA.—To be found transcribed at page 98.

Rule on Bank of America, garnishee.—Extract from the minutes of February 12th, 1867.

NOTA.—To be found transcribed at page 107.

Marshal's return thereon.

152 NOTA.—To be found transcribed at page 107.

Rule and grounds by Ja's Jeffries, intervenor.—Extract from the minutes of February 13th, 1867.

NOTA.—To be found transcribed at page 109.

Marshal's return thereon.

NOTA.—To be found transcribed at page 109.

Continuance of rule.—Extract from the minutes of March 4th, 1867.

NOTA.—To be found transcribed at page 111.

Motion and order of discontinuance.—Extract from the minutes of June 7th, 1867.

NOTA.—To be found transcribed at page 111.

RECORD 12939 OF 4TH DISTRICT COURT, OFFERED IN EVIDENCE JULY 5TH, 1867.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

153 JAMES JEFFRIES, PLAINTIFF & APPELLANT,
vs.
BELLEVILLE IRON-WORKS COMPANY, defendants, & R. Wells & als., garnishees, defendants in rule & appellees. } 12939.

Simonds & Fenner, attorneys for appellant.
C. Roselius, & Benjamin, Bradford & Finney, attorneys for appellees.

TRANSCRIPT OF APPEAL.

6911. Supreme court. Filed November 10th, 1860.
(Signed) F. A. FOYGNET,
D'y Clk.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Petition.—Filed Jan'y 18th, 1859.

154 To the Honorable J. W. Price, judge of the 4th dist. court of New Orleans:

The petition of James Jeffries, a citizen of the State of Pennsylvania, residing in the city of Philadelphia, respectfully shows:

That the Belleville Iron-Works Company, a corporate body, organized and chartered by authority of the laws of the State of Louisiana, and domiciliated in the city of New Orleans, is justly indebted to your petitioner in the sum of three thousand two hundred and sixty-two $\frac{66}{100}$ dollars, with legal interest thereon, since the 31st December, 1858, the current of exchange on New York and costs of protest, for this, to wit: Petitioner is the holder and legal owner of a promissory note signed J.

J. Person, the president, and countersigned by R. Wells, acting secretary of the said company, dated the 28th December, 1857, according to which the said company promised to pay, twelve months after date, to the order of R. Wells, acting secretary, thirty-two hundred and sixty-two $\frac{86}{100}$ dollars, with current of exchange on New York, which said note is endorsed in blank by the said acting secretary, and put
155 in circulation by authority of said company.

Petitioner further states that said note, at its maturity, was presented at the office of said company, and payment thereof demanded, which was refused. Whereupon the said note was duly protested for non-payment, and notice of said demand and protest for non-payment given to all parties entitled to the same, all of which will fully appear from said note and protest, hereto annexed.

Petitioner further states that he is advised that, on the 29th day of December last past, and ex parte order was granted, by the judge of this court, upon the petition of the defendant, praying to be allowed to make a voluntary cession of its assets to its creditors, staying all proceedings against the person and property of the said company.

Petitioner respectfully insists that said order is illegal, and was improvidently granted by the judge of this court; therefore he an-
156 nulled and vacated, for this, that corporations, such as the defendant in case, have no right under the laws of this State to make a voluntary surrender of their property to their creditors, and name the benefit of the insolvent laws of this State, and that the institution of the proceeding by the said defendant against its creditors for that purpose is only calculated to ha'rass and delay its creditors in collecting their debts.

Wherefore, in consideration of the premises, petitioner prays that the Belleville Iron-Works Company be cited, by service of a copy of the petition and citation upon J. J. Person, pres'd't, to answer this petition, and that, after due proceedings had, the order heretofore granted by the judge of this court, staying all proceedings against the person and property of the defendant on the petition of the defendant of file in this court, be annulled and vacated, and that the defendant may be condemned to pay your petitioner the sum of thirty-two hundred
157 and sixty-two $\frac{86}{100}$ dollars, with the current of exchange on New York, viz: sixteen $\frac{31}{100}$ dollars, and three dollars costs of protest, with legal interest thereon from 31st of December, 1858, and costs of this suit, and for such other and further relief in the premises as he is entitled to ask and recover.

(Signed) WM J. VASON,
Att'y for Pl'ff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

The Belleville Iron-Works Co.:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court

of New Orleans, in the city of New Orleans, in ten days after
158 the service hereof.

Witness the Hon. John W. Price, judge of the said court, the 18th day of January, in the year of our Lord 1859.

(Signed) A. N. MURTAGH,
D'y Clerk.

Sheriff's return.

Received January 19th, 1859, and on the same day served a copy of this citation and accompanying petition on J. J. Person, president of the Belleville Iron-Works Company, defendants herein, personally.

Returned same day.

(Signed) ROB'T SWAIN,
D'y Sheriff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Order making syndic a party.—Filed 24th February, 1859.

On motion of W. J. Vason, counsel for the plaintiff, and suggesting to this court that R. Wells has been elected syndic of the credit-
159 . ors of the defendants since the institution of this suit, it is therefore ordered by the court that R. Wells, syndic, be made a party to this suit, by service of a copy of the petition and citation, and that he be required to file his answer thereto within the legal delay.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Mr. R. Wells, syndic, &c.:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

160 Witness the Hon. John W. Price, judge of the said court, the 24th day of February, in the year of our Lord 1859.

(Signed) SAM'L GILMORE,
D'y Clerk.

Sheriff's return.

Received February 25th, 1859, and on the 2d of March, 1859, served a copy of this citation and accompanying petition on R. Wells, syndic herein, by leaving the same at his domicil, corner of Carondelet and Canal streets, living in the said house, whose name I learned by interrogating her, he being absent from home at the time of service.

Returned same day.

(Signed) H. C. SWAIN,
D'y Sheriff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Exception.—Filed March 12th, 1859.

Now comes Richard Wells, made party herein in his capacity
161 as syndic of the said defendants' creditors, and excepts to the petition of said plaintiff, that he cannot proceed in the manner and form attempted herein; that inasmuch as the said defendants have made a cession of their property to their creditors, the same has been duly accepted, and a stay of proceedings granted thereupon, as will appear from reference to the suit now pending in this honorable court, entled "Belleville Iron-Works Co. vs. Their Creditors," the plaintiff herein cannot prosecute this suit, but the same should be cumulated with the said insolvent proceedings. Wherefore said appearer prays that this exception be maintained, and that he be hence dismissed with costs and general relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
For Def'ts.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

162 *Order fixing exception.—Minutes, 29th March, 1859.*

On motion of W. J. Vasson for plaintiff, with the consent of E. A. Bradford for defendant, it is ordered that the exceptions herein filed be fixed for hearing on 4th April, 1859, at 10.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Order.—Exceptions submitted.—Minutes, 4th April, 1859.

The exception filed by the defendant on 12 March, 1859, came on this day—Vason for plaintiff; Benjamin, Bradford & Finney for defendant—when, after hearing argument, the court took time to advise.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Reasons.—Filed May 2d, 1859.

For the reasons assigned and on file in the case of Jeffries vs.
163 Belleville Iron-Works Co., No. 12851 of the docket of this court, it is ordered that the exception herein filed by Richard Wells, syndic, be sustained, and that this cause be cumulated with the insolvent proceedings of the Belleville Iron-Works Co. vs. Their Creditors.

(Signed) J. W. P., *Judge.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Judgment.

For the reasons assigned and on file in the case of Jeffries vs. Belle-

ville Iron-Works Co., No. 12851 of the docket of this court, it is ordered that the exception filed by Richard Wells, syndic, be sustained, and this suit cumulated in the insolvent proceedings of the Belleville Iron-Works Co. vs. Their Creditors.

Rendered May 2d, 1859. Signed May 6th, 1859.

(Signed) J. W. PRICE, *Judge.*

164 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Order cumulating cases.—Minutes, May 2d, 1859.

For the reasons assigned and on file in the case of Jeffries vs. Belleville Iron-Works Co., No. 12851 of the docket, that the exception filed by Richard Wells, syndic, be sustained, and this suit cumulated with the insolvent proceedings of the Belleville Iron-Works Co. vs. Their Creditors.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Petition of appeal.—Filed May 10th, 1859.

JAMES JEFFRIES
vs.
J. J. PERSON, PRES'T, &C.; R. WELLS, SEC'T'Y & syndic of Belleville Iron-Works Co. } 12851.

165 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO., R. WELLS, syndic, &c., &c. } No. 12939.

In the 4th dist. court of New Orleans, ordered to be cumulated with the proceedings in the case of the Bellesville Iron Co. vs. Their Creditors, &c.

To the honorable the judge of the 4th district court of New Orleans:

James Jeffries, the plaintiff in the two above cases, respectfully states that he is aggrieved and injured by the judge of this court sustaining the exceptions of R. Wells, syndic, and ordering the said cases to be cumulated with the proceedings in the matter of the Belleville Iron-Works Co. vs. Their Creditors, pending in this court, and therefore prays to be allowed to appeal from the said judgments, and orders to the Supreme Court that what of right and justice should be may be done in the premises; and as in duty bound, &c., &c.

166 (Signed) W'M J. VASSON,
Counsel for Petitioner.

It is agreed that these two cases shall be consolidated; that an appeal may be taken by the plaintiff from the judgments and orders of this court rendered in both cases as if rendered in one alone; that one copy of the record which shall consist of plaintiffs' petitions, the defendants' answers to one, the syndic's exceptions filed in both, and the judgments and orders of this court rendered in both cases, the petition and schedule of the defendant, the order of the court thereon, and the appointment of Wells syndic of defendant creditors shall be considered suffi-

cient, either party being at liberty to use any other parties of the record.

(Signed) BENJAMIN, BRADFORD & FINNEY.
W'M J. VASON.

Order of appeal.

An appeal is allowed in these cases as prayed for, and according to law, returnable to the Supreme Court the 4th Monday of June,
167 1859, the appellant giving bond in the sum of one hundred and fifty dollars, with good and solvent security, conditioned as the law directs.

May 10th, 1859.

(Signed) J. W. PRICE, *Judge.*

Bond of appeal.—Filed May 10th, 1859.

Know all men by these presents that we, James Jeffries, of Philadelphia, and H. W. Conner, of the city of New Orleans, are held and firmly bound unto R. Wells, syndic of the creditors & Co., or J. J. Person, pres'd't, & R. Wells, secretary, of the Belleville Iron-Works Company, of N. O., their executors, administrators, and assigns, in the sum of one hundred and fifty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated in the city of New Orleans, on this ninth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

168 Whereas the above bounden James Jeffries this day filed a petition of appeal from two judgments, orders rendered against him in the suit of James Jeffries vs. The Belleville Iron-Works and R. Wells, syndic of the creditors of the Belleville Iron-Works Co.; James Jeffries vs. J. J. Person, pres'd't, and R. Wells, syndic of Belleville Iron-Works Co., in the fourth district court of New Orleans, on the 2d of May, 1859:

Now, the condition of the above obligation is such, that the above-bound James Jeffries shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said H. W. Conner, surety, shall be liable in his place.

(Signed) JAMES JEFFRIES, [L. S.]
P'r W. J. VASON.

(Signed) H. W. CONNER, [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) W'M J. VASON.

169 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Supplemental petition.—Filed Jan'y 26th, 1860.

In the 4th district court of New Orleans, suit on promissory note, &c., &c., No. 12939, on the docket of said court, &c.

The supplemental petition of James Jeffries, the plaintiff in the above-stated case, filed by leave of this hon. court.

1st. Petitioner states that J. J. Person & R. Wells, both residing in this city, are justly and legally liable to pay, in solido, the amount of

the note described in his original petition, with interests and costs to this petition, for this, to wit:

The said Person is now, and has been since its organization, the president of the said company, and, as the head and representative thereof, it was his duty to the creditors of the company to devote that time
170 and attention to the administration and management of its affairs and business operations thereof that a prudent and cautious man bestow on his own private business; but he has not done so; and, on the contrary, he has neglected to do many things he should have done, particularly this, to wit, he neglected to enforce the payment of the subscriptions of B. Fallon and F. W. C. Cook, to the capital stock of said company, and omitted to retain the amount thereof out of the debt due and owing to them by the company for the purchase of the establishment known as the Belleville Iron-Works, now occupied by the said company, by reason of which negligence and carelessness the assets and means to pay its creditors have been diminished to the extent of thirty thousand dollars, or more, in consequence of the subsequent insolvency or inability of the said Fallon and Cook to pay their subscription.

2d. Petitioner further states that the said Person, for the purpose of inducing the creditors of the said company to grant an extension
171 of 9 & 12 & 15 months' credit on their debts falling due in the fall of 1857, represented to them that the affairs of said company were in a good condition, and its means to pay its debts abundant and more sufficient, and that they would be promptly paid if the desired extension was granted. Confiding in the truth of that representation petitioner granted the further credit; yet when the first instalment of one-third of his debt matured, at 9 months thereafter, it was protested for non-payment and suit therefor was instituted in this court on 10th December, 1858, by petitioner. And thereupon the said Person combined and confederated with the said R. Wells and others, whose names are unknown to petitioner, for the purpose of harrassing, delaying, and preventing petitioner from recovering judgment against the said company for the amount of his debt then due and unpaid; illegally and wrongfully caused a petition to be filed herein, stating therein the inability and insolvency of the said company, and tendering a ces-
172 sion of its property to its creditors, and obtained thereon an ex-parte order from the judge of this court, which operated a stay of proceedings in this, as well as in the other suit instituted by petitioner, against the said company, until the same was set aside by the Supreme Court, on appeals which petitioner was compelled to prosecute from the orders of this court. Pending the contestation resulting from the filing of said petition, R. Wells, aided and abetted by the said Person, and with his consent and knowledge, illegally and wrongfully took possession and control of all the property and assets of the said company, valued at $191,347, schedule sworn to by said Person, and has wasted and sacrificed the same by pretended sales thereof, the proceeds of which, amounting to $50,000 or thereabouts, he has or proposes to misapply to the payment of extravagant fees and fanciful commissions for fabulent services and for rent which will not accrue for several years hence.

173 By reason of the said illegal and wrongful acts and conduct of the said Person, and the said R. Wells, in the premises, petitioner has been harassed, delayed, and prevented from collecting the debt due and owing to him by said company, and the property and assets

of the said company have been wasted and sacrificed and the said company rendered unable to pay its debts.

Wherefore petitioner insists that the said Person and Wells are justly and legally liable to pay to him the amount of his debt due and owing by said company.

Wherefore, in consideration of the premises, petitioner prays that the said J. J. Person and R. Wells may be cited and made parties to his original suit herein, and make answer hereto, and that, after due proceedings had, he may recover and have judgment against them in solido, for the amount of the debt claimed in his original petition, and for general relief in the premises.

(Signed) WM J. VASSON,
Counsel for Pl'ff.

174 (Signed) SIMONDS & FENNER.

JAMES JEFFRIES
vs } No. 12939.
BELLEVILLE IRON-WORKS CO.

Order.

Let this supplemental petition be filed as herein prayed for and according to law.

New Orleans, January 26, 1860.

(Signed) J. W. PRICE, *Judge.*

JAMES JEFFRIES
vs. } No. 12939.
BELLEVILLE IRON-WORKS COMPANY.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

You are hereby summoned to comply with the demand contained in the petition, original and supplemental, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

175 Witness the Honorable J. W. Price, judge of the said court, the 27th day of January, in the year of our Lord 1860.

(Signed) FRANÇOIS FORTIER,
D'y Clk.

Sheriff's return.

Received New Orleans, January 27, 1860, and on the 30th of same month and year served a copy of this citation and accompanying original and supplemental petition on R. Wells, defendant herein, personally.

Returned same day.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

JAMES JEFFRIES
vs. } No. 12939.
BELLEVILLE IRON-WORKS COMPANY.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Mr. J. J. PERSON:

You are hereby summoned to comply with the demand con-
176 tained in the petition, original and supplemental of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court in the city of New Orleans, in ten days after the service thereof.

Witness the Honorable John W. Price, judge of the said court, the 27th day of January, in the year of our Lord 1860.

(Signed) FRANÇOIS FORTIER,
D'y Sh'ff.

Sheriff's Return.

Received New Orleans, January 27, 1860, and on the same day served a copy of this citation and accompanying petition on J. J. Person, defendant herein, personally.

Returned same day.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. & ALS. } No. 12939.

Exception of R. Wells.—Filed 16th February, 1860.

177 Now comes Richard Wells, made defendant to the above-entitled suit, and excepts to the supplemental petition by which he is made a party defendant herein, on the following grounds:

1st. That it is not competent to the said plaintiff by such supplemental petition to join the action against this defendant with the previous action already pending, because the two actions are entirely distinct and independent; the action against the said Belleville Iron-Works Company being an action ex contractu for the amount of the note sued upon, and the action against this defendant being an action ex delicto for damages on the grounds set forth in said supplemental petition.

2d. That it is not competent to unite this defendant in the same action instituted against his co-defendant J. J. Person, inasmuch as the action against this defendant is on different grounds and on different and distinct allegations.

Wherefore defendant prays that his exception be maintained,
178 and that he be hence dismissed, with all costs and for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
For Defendant.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. & AL. } No. 12939.

Answer of J. J. Person.—Filed Febr'y 16, 1860.

Now comes J. J. Person, made defendant in the above-entitled suit, and for his separate answer to the petition of the said plaintiff, denies

generally the allegations of said plaintiff tending to charge this defendant as liable in damages or as in any way indebted or responsible to said plaintiff.

Wherefore defendant prays to be hence dismissed, with all costs and for general aid and relief.

(Signed) BENJAMIN, BRADFORD, & FINNEY,
Att'ys.

179 JAMES JEFFRIES
vs.
BELLEVILLE IRON WORKS CO. & AL. } No. 12939.

Default.—Filed February 29th, 1860.

On motion of Simonds & Fenner, plaintiff's attorney', ordered that there be judgment by default on the original petition against the Belleville Iron-Works Company, and also against R. Wells, made party as syndic.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Order fixing exception.—Filed February 29th, 1860.

On motion of Simonds & Fenner, plaintiff's attorneys, ordered that the exception of R. Wells, filed herein on February 16th, 1860, be fixed for trial for Tuesday, March 6th, 1860, at 10 o'clock a. m.

180 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Notice of trial.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

To Messrs. BENJAMIN, BRADFORD & FINNEY.

You are hereby notified that the exceptions filed by Richard Wells is fixed for trial on Tuesday, the 6th day of March, 1860, at 10 o'clock a. m.

Clerk's office, New Orleans, February 29th, 1860.

(Signed) JULES VIENNE, *D'y Clk.*

Sheriff's return.

Received New Orleans, February 29th, 1860, and on the first of March, 1860, served a copy of this notice of trial on E. A. Bradford, esq., of the law firm of Benjamin, Bradford & Finney, personally.

Returned same day.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

181 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Default set aside.—Minutes March 3d, 1860.

On motion of Benjamin, Bradford & Finney, for the Belleville Iron-Works Company, and upon filing its answer, it is ordered that the

judgment by default herein rendered against said company be set aside.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Answer.—Filed March 3d, 1860.

Now come the Belleville Iron-Works Company, defendants herein, plead general denial, and pray to be hence dismissed, with costs and for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Attorneys.

182 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Answer of syndic, R. Wells —Filed March 5th, 1860.

Now comes the defendant, Richard Wells, in his capacity as syndic only, admits that he is acting in said capacity under his appointment, duly confirmed by this honorable court, but denies generally all the other allegations in said petition, and prays to be hence dismissed in his said capacity, and for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Exception overruled—Minutes March 6th, 1860.

The exception filed herein by Richard Wells, on the 16th February, 1860, came on to-day for trial. Simonds & Fenner for plaintiff,
183 Benjamin, Bradford & Finney for R. Wells.

After hearing the pleadings and argument of counsel, the court ordered that said exception be overruled, and defendant R. Wells ordered to answer over.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Default vs. Wells on original and supplemental petition.

On motion of Simonds & Fenner, of counsel for plaintiff, and upon suggesting that the exception of R. Wells, in his individual capacity, filed herein on the 16th February, 1860, has been overruled, and no answer yet filed herein by him, it is ordered that there be judgment by default against him individually on the original and supplemental petitions.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

184 *Separate answer of R. Wells.—Filed March 9th, 1860.*

Now comes Richard Wells, made defendant herein in his individual character, and for his separate answer denies generally all allegations in the petition of said plaintiff contained, tending to charge this defendant as in any way liable in damages to said plaintiff. And he prays to be hence dismissed with all costs, and for general aid and relief in the premises.

(Signed) BENJAMIN, BRADFORD & FINNEY,
For Def't.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Default against Wells set aside.—Minutes March 9th, 1860.

On motion of Benjamin, Bradford & Finney, of counsel for defendant Richard Wells, and upon filing his answer it is ordered that the judgment by default herein rendered against him be set aside.

185 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Testimony.—Filed March 19th, 1860.

Plaintiff introduces in evidence the note and protest; also the insolvent proceedings of the Belleville Iron-Works Company, No. 12890 of the docket of this court, and all the documents herein filed, reserving the rights of the parties to use what portions of the same they think proper. Offer also the letter "A" of her president to the plaintiff; also the decree of the supreme court on the appeal heretofore had in this case; also the bills of cost of the clerk for the transcript of appeal and the bill of costs of the clerk of the supreme court, to be furnished; also the sheriff's return on the execution of the order of sale of the lease of the premises.

F. W. C. COOK, for plaintiff, sworn, (first sworn on voir dire;)
186 says he was a stockholder of the Belleville Iron-Works Co.

(Objected to on the ground of interest; objection overruled.)

In chief sworn, says: The company was formed early in March, 1857, and he had the entire management of the works. He was well acquainted with the property on hand and its value. He had more acquaintance with it than anybody else. Witness was there when the inventory was taken on the 12th of October, 1857, but he had nothing to do with it, except so far as the weights are concerned, which he took. He knows the weights are correct, and that is all he knows of said inventory. He had no hand in the valuation of the property; therefore, he cannot state that the inventory is correct, nor can he point out an error. He does not know what valuation was put on the articles; knows there were many omissions in said inventory; there was an omission in

regard to the patterns to the amount of $7,000; also another in regard to a pair of double-flued boilers, valued at about $1,200. He took no part in the inventory that was taken on the 12th October, 1857,
187 because they could not agree upon a basis for closing the same. Witness insisted on the valuation to be made in the new inventory, to take the prices paid by the company and specified in a former inventory, made previous to March 9th, 1857; that was the inventory under which the company purchased the materials, &c., &c., from Cook & Fallon. He ceased to be the manager of the company about the first day of November, 1857. He is not quite certain, but thinks that is the time he left. He knows nothing of the business of the company after that time.

Cross-examined:

The item of $7,000 for patterns spoken of by him in his testimony-in-chief as having been omitted in the inventory, Oct. 12th, '57, was the cost of the new patterns, made subsequent to the 9th March, 1857, and should have been included in the inventory of the 12th October, 1857. The item of $1,200 for a pair of double-flue boilers was not in the inventory of the 12th October, 1857, at all, but when the inventory
188 was taken the said patterns and boilers were on the premises. These double-flue boilers had been manufactured for the steamboat Kate Dale. Witness attended the sale of the assets of the company by the sheriff. The patterns were all sold at this sale; all those he refers to as well as the others. Witness' brother, A. Cook, was at this sale, and he bid as high as $2,000 for these patterns. His bid was for the patterns which had originally cost $33,000. They were adjudicated, he thinks, to Mr. Sumner, for $2,100. Witness was a partner of Cook & Fallon, and from the Belleville Iron-Works Company purchased. He had no other means to pay his subscription to the stock, except what he expected to realize from the settlement of the partnership of Cook & Fallon, and with other personal funds he might earn. He thought all along that after the settlement of all the debts of said firm there would have been a surplus of assets which would have
189 enabled him, with the assistance of his subsequent earnings, to pay his subscription to the company. His subscription was paid in this way: He paid in cash $5,000, and gave his individual notes for $20,000 for the balance, at 3, 6, 9, & 12 months. The company purchased from Cook & Fallon, and his stock subscription was on his individual account.

(Counsel for defendants now reads the entry on the minutes of the company of date 23d May, 1857.)

Defendants offer the said entry in evidence (copy to be furnished.)

Witness says said entry is correct.

Defendants offer the said entry in evidence (copy to be furnished.)

Witness was unable to make said payment as mentioned. He never knew until now that his application had been passed upon by the board, nor that he had been authorized by the company to sell a portion of his stock; therefore he never made an attempt to sell. He was well aware that they had decided he could keep $10,000 of stock, and that was all he ever did know.

Re-examined:

190 Witness cannot tell why the patterns that had cost $30,000 sold for only $2,100. He does not think that the cost of removing them was the cause of their selling so low. He cannot say why

they did not sell for more. They were certainly worth a good deal more, put up as they were, to carry on the business as was there established, and with a competent person who understood their use. He supposes they sold so low on account of their being sold by the sheriff at public auction.

B. FALLON, for defendants sworn, says:

He was one of the members of the firm of Cook & Fallon, and he subscribed for stock to the amount of $25,000 individually. He has paid $20,000 of said stock; the balance he owed was on a note expiring about the time the concern got into trouble. He settled this note by a compromise with the company for $500. This compromise was passed upon, and the minutes of the board will show the proceeding. This compromise was subject, however, to a majority of the creditors.

191 The minutes of the meeting of 15th Dec'r, '58, being read by the counsel for defendant, witness says the same is correct, and that was the resolution passed on his application, and a majority of the creditors, in writing, released him.

(Defendants' counsel offer in evidence said entry of the minutes of 15th Dec'r, 1858.)

Cook and Fallon were the vendors to the company. Witness invested everything he possessed in said company. He believed the assets of Cook and Fallon were sufficient to pay all their debts. He believes there are some few claims yet unpaid, to some few creditors, but they don't amount to much. After Cook left the employ of the company, witness was sent to the North twice to get some one to be the manager of the company. Witness went with circular letters on the 5th Dec'r, 1857, that is, the letter preceeded him. He was the person mentioned in said letter "A" and went accordingly. He saw the creditors of the company; they all had a copy of said letter "A."

192 He saw the plaintiff also. The object of his mission was represented to the creditors, and that the choice of a proper person to take the management was necessary to the salvation of the whole concern. He showed the written instruction to the creditors and to the plaintiff also, and asked for their co-operation. He was in the North about two months, and did not succeed in closing any arrangement on the terms required by the company. There was a conditional understanding with Mr. Tyler, of Springfield, which led to the belief that he might possibly come to an arrangement at a later day. Witness returned to this city and reported to the company, and a short time afterwards they commenced to correspond with Mr. Tyler, on account of having received a letter from him, and witness was sent back again to try to close with him or with some one else. Mr. Tyler, on account of certain circumstances connected with himself, concluded he could not come, and the only success the witness had, was to engage a

193 Mr. Davidson, of the Novelty Works, to come here to visit the place, and then decide, his expenses being paid by the company. The creditors, some of them at the North, were aware of the circumstances as they transpired. It was on witness' return here in summer with Davidson, who after weeks' stopping here, declining to engage, that the company decided to go into court. Being shown a letter, says it was written in witness' presence, by Mr. Davidson, and was addressed to the company.

(Defendant introduces the said letter in evidence to prove remission. —B.)

The property was advertised in northern papers for sale, and also in newspapers of this city.

(Defendant offers in evidence resolution of the board of the 14th July, 1858.)

Under this resolution, witness says that the property was advertised for sale in New York, Philadelphia, and New Orleans papers.

(Defendant also offer' the minutes of the meeting of the 14th Dec'r, 1858.)

Witness was the secretary at those meetings, and the proceed-
194 ings had at that time are correct. There was no other proposition made but that one mentioned. The plaintiff in this suit was paid one instalment of 25 %, and the same payment was made to all the creditors alike. He had several meetings with the plaintiff in Philadelphia. His reports to the plaintiff on the affairs of the company are full and complete. It was a short time after the date of the letter "A" on file that witness went North. The plaintiff was well aware of the affairs of the company, and that its fate depended entirely on finding a competent man to take charge of the works. Can't tell at what time Mr. Cook ceased to be the manager of the company, but the minutes will show.

(Defendants offer the minutes of the company of date 2d November, 1857.)

Being shown report X, says he thinks that was the report of Mr. Wells, presented to the board at that meeting.

(Defendants introduce in evidence said report X.

195 (Received as to Mr. Person only, and to show that Mr. Wells was the president pro tem. during the summer.)

Witness says all the facts contained in said report are correct, so far as he examined into the same. An appraisement was made by Mr. Grinnell and Mr. Marsh, in conjunction with D. Hooke. (The Document K is a copy of said inventory made by them, and is offered in evidence.) Witness believes that there were certain portions or items of the inventory made by them which were taken from the inventory made at the time of the sale by Cook & Fallon to the company. The work that was done by the company for the Kate Dale, he believes, was delivered to the boat. Witness was not in the city when the work was concluded. There were five of the directors who came to the aid of the company, and gave their notes for $20,000, to be used in the aid of the com-
196 pany. There were 5 notes, each note signed by 5 names separately. The said notes were furnished to the company, and the company used said notes, and they were paid by the parties, as they were never returned. The amount so advanced by the directors is still due, besides the 25 % pro rata received by the other creditors. The directors have never made any charge for the same. No preference was given to them, and they were placed on the same footing with the other creditors. The names of the gentlemen who gave their notes were Mr. Person, Mr. Hanneman, Mr. Sumner, Mr. Brown, and Mr. Fellows.

The letter "A" on file, being shown to witness, says it is in the handwriting of Mr. Wells. All the others were of the same effect. This letter was written under the authority of the board, and approved of by them. That letter contains the full statement of the affairs of the company at that time, and represented the state of things which existed.

The president of the company took a personal interest in the
197 affairs of the company. He was present at all the meetings, always attended to witness whenever he called upon him on business of the company, and even gave witness a desk in his office. The

president never received any compensation for his services, nor did he ever make a charge for the accommodation given to witness in his office.

Cross-examined:

Being shown the note sued on, says he believes it was one of the notes given for the extension. There were three notes given in all for the extension, and at the same time. Does not know that since the dissolution of the firm of Cook & Fallon that Mr. Cook has paid $1,300 of the debts of said firm. If it is so, he is glad to know it. In the sale of Cook & Fallon to the company, they, Cook & Fallon, received from the company payment, part in cash and part in notes of the company.

198 Witness saw the advertisements in the Philadelphia and New York papers; therefore knows the same was published. The costs-book was brought up by Mr. Hendricks, but the details were furnished by Mr. Cook. Mr. Cook was the only person who could know whether the minutes were correct or not. The time-book was a part of the cost-book. The foreman came into the office occasionally. They had access to the books, and could look at them if they chose. The foreman brought up the books, from which Mr. Hendricks made the entries in the books he kept. Mr. Cook was not present when the Report X was read to the board. Mr. Cook knew there was a charge made against him, but witness cannot tell that he had a knowledge of the Report X either before or after it was made. Knows that Mr. Cook was aware of a charge against him from a letter on file written to him on the subject, and a reply made by him to the same.

Re-examined:

(Defendants offer in evidence the printed copy of the by-laws of the company, to be furnished.)

199 The crisis of 1857 embarrassed greatly the business and prospects of the company.

Recross-examined:

The time-book was kept by Mr. Luke, who made the entries therein from the reports of the foremen. The foremen had the habit of coming up in the general office, and would stand by and report to the clerk, or to the book-keeper, to whom they made their return. There were two clerks in the office. The book-keeper had no clerk under him. He and the others were clerks alike. Mr. Hendricks kept the cost-book; both the cost-book and the time-book were kept in the main office; in fact, one formed part of the other.

EDWARD GRINNELL, for defendants, sworn, says:

He is a member of the firm of Leeds & Co., founders. Witness has been in the foundry business something over 23 years. In October, 1857,

200 he was called upon to make an appraisement of the stock, material, &c., belonging to the Belleville Iron-Works Company. Mr. Marsh and Dr. Hooke acted with him in this matter, and they valued the same at what they considered it was worth there to carry on the business. The stock and fixtures were not appraised, that is, they took the appraisement from a previous inventory which was submitted to them. In this work of valuation they proceeded with care, and took parts of the several days to make said appraisement.

Cross-examined:

Recollects of having appraised some wrought-iron at 2 cents per lb., and some even less than that. In this appraisement they proceeded in

the same way as if they were taking an account of stock, which they do every year. He formed an opinion of the value he put on the articles from what he would give for them himself. The valuation he put on the articles was a great deal less than what the company had paid Cook and Fallon for them.

201 Re-examined:

The effect of the crisis of 1857 was very disastrous to manufacturers, and more particularly to a new company just commencing operations. It affected seriously all works of manufacturing, and more that kind where the most of the business is done on a credit. Witness was present at the first sale of the assets of the company. He does not think he was present when the patterns were sold. He would scarcely attach any value to these patterns, except to carry on business just where they were. These patterns are not a saleable article.

B. FALLON, recalled by defendants, says:

The inventory made when Cook and Fallon sold out to the company amounted to $190,000, but a reduction of over $30,000 was made. This inventory had been made by two parties, one party appointed by the company, and the other selected by Cook & Fallon. There was
202 also a committee appointed to negotiate for the purchase. This committee was composed of Gen. W. R. Miles, Mr. Person, & Mr. Wood, and the mode agreed upon between the said committee and Cook & Fallon as to how this inventory should be made.

After the said inventory had been completed, a deduction was insisted upon by said committee, and, in order to effect the sale, Cook & Fallon accepted this deduction—submitted.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Note and protest introduced in evidence by plaintiff.—Filed March 19th, 1860.

NOTE.

BELLEVILLE IRON-WORKS COMPANY,
$3,262.86.] *New Orleans, 28th December,* 1857.

Twelve months after date, we promise to pay to the order of R. Wells, acting secretary, thirty-two hundred and sixty-two $\frac{86}{100}$
203 dollars, value received, with current rate of exchange, on New York.

(Signed) R. WELLS, *Act'g Sec'y.*
(") J. J. PERSON, *President.*

No. 187, due 1st Jan'y, 1859.

(Endorsed.)
(Signed) R. WELLS, *Act'g Sec'y.*

PROTEST.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known that, on this thirty-first day of December, in the year one thousand eight hundred and fifty-eight, at the request of the cashier of, and holder for, the Citizens' Bank

of Louisiana, of the original note, a true copy is on the reverse hereof written, I, Adolphe Boudousquie, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to a clerk of J. J. Person, at the
204 office of the Belleville Iron-Works Company, (the said Person being the president thereof,) and demanded payment thereof, and was answered that no funds had been left with him to pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and, by these presents, do publicly and solemnly protest as well against the drawer and maker of said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered or to be suffered for want of payment of said note.

Thus done and protested in the presence of Adolphe Blache and Louis Dutour, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Signed) AD. BOUDOUSQUIE,
Not. Pub.

205 BELLEVILLE IRON-WORKS COMPANY,
$3,262.86.] *New Orleans, 28th December*, 1857.

Twelve months after date, we promise to pay to the order of R. Wells, acting secretary, thirty-two hundred and sixty-two $\frac{86}{100}$ dollars, value received, with current exchange on New York.

(Signed) R. WELLS, *Act'g Sec'y.*
(") J. J. PERSON, *President.*

(Endorsed.)
(Signed) R. WELLS,
Act'g Sec'y.

Cr. H. W. Connors & Son.

Plaintiffs offer in evidenc' the lease of iron-works, by R. B. Sumner to F. W. C. Cook, being part of the record of suit 12890.

STATE OF LOUISIANA,
Parish of Orleans & City of New Orleans:

Be it known that, on this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-four, before
206 me, Richard Brennan, a notary public in and for the parish of Orleans, and State of Louisiana, duly commissioned and sworn, in the presence of the witnesses hereinafter named and undersigned, personally appeared Messieurs Richard B. Sumner, John Hughes, and F. Valette, and Mistress Josephine V. Thomas, widow of the late Mark Thomas, all of this parish, of the first part, and Ferdinand W. C. Cook, also of the said parish, of the second part. Now, the said parties of the first part declared that, as the sole owners of all and singular a certain portion of ground, together with all the buildings and improvements thereon, and rights, ways, usages, and appurtenances unto the same belonging, situate in the parish of Orleans, on the right bank of the Mississippi River, known as the Belleville Iron-Works, they have, for the term of 5 years, for the price and consideration, and under the covenants and stipulations hereinafter set forth and expressed, demised,

and to farm let unto the said party of the second part here
207 present, and accepting the same, the following-described portion of the said Belleville Iron-Works, to wit:

The moulding floor, with the yard-room between the upper wing and the office, the upper wing, chimney and engine-room, and the office, (except one room on the lower floor reserved,) the engines, boilers, and all the machinery in the establishment.

The parties of the first part bind themselves to erect such a partition between the portion of the property so leased and the residue thereof as they may deem fit and proper; and the said parties of the first part also obligate themselves to keep the buildings so leased in good condition and repairs, and said parties of the first part declared that all the machinery in said buildings is hereby let or hired with said buildings, an inventory of which, signed by all the parties hereto, is to this act annexed as a part thereof, and it is agreed that possession of the
208 premises so leased shall be given to said party of the second part on the day of the date hereof, but that the rent or wages therefor shall not commence until the first day of January next, one thousand eight hundred and fifty-five, and that said lease shall determine and end on the thirty-first day of December, one thousand eight hundred and fifty-nine. The said party of the second part hereby promises and agrees to pay the said parties of the first part, or to their duly appointed agent, rent for the said property, engines, boilers, & machinery so leased, as follows: For the first year two thousand dollars, for the second year two thousand five hundred dollars, for the third year three thousand two hundred and fifty dollars, for the fourth year four thousand two hundred and fifty dollars, and for the fifth year five thousand five hundred dollars, all payable quarterly; and accordingly the said party of the second part has furnished four certain promissory notes by him made
209 to his own order, and by him endorsed, each for the sum of five hundred dollars, dated this day, and payable respectively on the first day of April, July, and October, 1855, and first day of January, 1856; four notes in the same manner made, dated, and endorsed, each for the sum of six hundred and twenty-five dollars, payable respectively on the first day of April, July, and October, 1856, and on the first day of January, 1857; four notes of same date by said party of the second part, made and endorsed as aforesaid, each for the sum of eight hundred and twelve dollars and fifty cents, payable respectively on the first day of April, July, and October, 1857, and first day of January, 1858; and four other notes by said party made, dated, & endorsed, each for the sum of one thousand and sixty-two dollars and fifty cents, payable respectively on the first day of April, July, and October, 1858, and first of January, 1859; and four other notes in like manner made and
210 endorsed, each for the sum thirteen hundred and seventy-five dollars, and payable respectively on the first day of April, July, & October, 1859, and first day of January, 1860, the receipt of which twenty several notes the said parties of the first part hereby acknowledge and full acquittance therefor grant; and it is hereby specially understood and agreed that if, at any time pending the said lease, the parties of the first part shall sell the said property hereby leased, then, after notice in writing thereof has been given to the said party of the second part, he shall, within six months thereafter, vacate the said premises, and this lease shall be therefrom considered as null and void, the notes given by said party for the unexpired part of said lease shall be returned to him cancelled, and he shall be entitled to receive from the said parties of the first part the sum of four thousand and five hundred

dollars as full compensation for all loss, damage, hindrance, or
211 injury to him occasioned by such sale and the consequent dispossession of said premises by the said party of the second part. Any and all changes and alterations of the machinery or upon the premises made by the said party of the second part shall be at his own proper cost and charge, as shall also be any additions or ameliorations by him made. All tools and machinery introduced by said party of the second part into said iron-works he shall have full right and authority, at the determination of this lease, to remove therefrom. Such small tools and stock as may now be on the premises leased, the party of the second part shall purchase at an equitable valuation, on a credit of six months, for the amount whereof he will furnish his promissory note to his own order, payable at six months. Failure to pay promptly at its maturity any one of the rent-notes to cause a forfeiture of this lease, and
212 it shall be lawful for the parties of the first part to cancel the same, and enter upon the possession of the property without any legal hindrance or impediment from the said party of the second part or his assigns. The name of the property now leased shall not be changed. The said party of the second part, at his own proper cost and charge, to keep the window-glass in the buildings herein mentioned in good order, and he shall buy the patterns now on hand in said works at a fair valuation. Any damage done to said buildings, other than natural wear and decay, to be made good by said party of the second part; and for the better enabling the said party of the second part successfully to carry on the business of a foundry and machine-shop, to which alone he hereby obligates to confine his business, the said parties of the first part hereby concede and grant unto the said party of the second part, pending the continuance of this lease, or until the present owners shall sell the batture or river front of *of* said Belleville Iron-Works,
213 a right of way to the river of twenty feet in width from the said works to the river, and also the privilege for all steamboats, ships, or other seagoing vessels having business with said foundry, to moor at the wharf opposite the same free of expense; but this privilege is for each steamboat, ship, or other vessel limited to a period of forty-eight hours, unless otherwise agreed to by the owner of said batture, and this privilege to determine and end with this lease or the said batture by the owners. And, lastly, should any disagreement occur between the parties hereto, touching the exact meaning of any part of this lease or contract, the point or points of disagreement shall be referred for arbitration and settlement to Messieurs Lafayette Folger and S. Bennett, and should they not agree in opinion upon the subject-matter submitted to them, then the said arbitrators shall select an umpire, whose decision shall be final and obligatory on the parties
214 to this act.

Thus done and passed in my office at New Orleans aforesaid, in presence of George Clark and Octave La Bedayere Kernion, competent witnesses, who have hereto signed their names, together with said appearers, and me, notary.

(Signed) JOSEPHINE VALETTE,
(*Ve Thomas.*)
" JOHN HUGHES.
" R. B. SUMNER.
" F. W. C. COOK.
" F. VALETTE.
" GEORGE CLARK.
" O. L. KERNION.
" R. BREAN, *Not. Pub.*

I certify the foregoing a true and correct copy of the original act of record in my current register. In faith whereof I hereto sign my name and affix the impress of my official seal at New Orleans aforesaid, this fifteenth day of December, eighteen hundred and fifty-nine.

(Signed) R. BRENAN, *Not. Pub.*

215 Plaintiffs introduce in evidence the act of sale of chattels, &c., to Belleville Iron-Works Company, by Cook & Fallon, being part of the record of suit No. 12890.

Sale of chattels, &c.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that, on this first day of the month of April, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Richard Brenan, a notary public in and for the parish of Orleans and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally appeared Charles Ferdinand William Cook and Bernard Fallon, both of this city, and carrying on business under the firm of Cook & Fallon, of the first part, and James J. Person, herein acting for and in behalf of
216 the Belleville Iron-Works Company, of New Orleans, an association duly incorporated under the laws of the State of Louisiana, as the president thereof, by virtue of a resolution of the board of directors of said incorporation, a certified copy of which is hereto annexed for reference, of the second part; which said appearers severally declared that, for and in consideration of the sum and price, and on the terms hereinafter set forth and expressed, the said appearers of the first part had agreed to sell to the said Belleville Iron-Works Company all and singular the machinery, tools, and stock in trade unto said appearers of the first part belonging, and contained in the Belleville Iron-Works on the ninth day of March last past, consisting, as per inventory hereto annexed and signed by said appearers, witnesses, and me, notary, and marked "ne varietur" by me, in order to identify the same herewith, and also to transfer to the said Belleville Iron-
217 Works Company from and after the said date of the ninth of March last past, the surrender of the lease of the said Belleville Iron-Works, with the right of way to low-water mark of the Mississippi River, of twenty feet in width, and certain machinery on said premises; all of which will appear by reference to an act passed in this office on the twelfth June last past, 1856, the lease of which premises and machinery will determine and on the thirty-first day of December, in the year one thousand eight hundred and sixty-five; which lease is subject to the payment of a certain percentage of the gross receipts of the works, as will appear by reference to the afore-recited act of the 12th June, 1856, made now a part of this act. Also, to the unexpired portion of the lease which said parties have of the office No. eleven, Commercial Place, in this city, from the said ninth day of March last past, in favor of Edward W. Jewell, as the whole will appear by refer-
218 ence to an act passed before William L. Poole, notary in this city, on 28th of October, 1856, to which particular reference is here made. And lastly, to transfer all the running contracts on hand on ninth March last for work engaged to be done by the said parties of the first part hereto. And the said parties of the first part, in conformity with the afore-recited agreement, do hereby sell, transfer, and set over

unto the said Belleville Iron-Works Company, the said appearer of the second part, in his said capacity for them, accepting, and purchasing, and acknowledging the due possession and delivery thereof of all the machinery, tools, and stock in trade, as per said inventory, hereto annexed; also, all the running contracts on hand as aforesaid, for work engaged to be done by the said parties of the first part, and also assume the cases referred to above, subject to all the conditions and agreements therein contained, and to pay the rents for the same, according to the tenor of said public acts respectively. And said party of the sec-
219 ond part, in his said capacity, full acquittance and discharge grants for the possession of all which. The sale of said machinery, tools, and stock in trade, and benefit of said unexpired term of lease, and of the running contracts on hand for work engaged, is made and accepted for the price and sum of one hundred and sixty-four thousand eight hundred and eighteen dollars and thirty-four cents; in part payment and deduction whereof the said party of the second part, in his said capacity, to the parties of the first part, have paid in cash the sum of thirty-two thousand nine hundred and sixty-three dollars sixty-seven cents, and for the balance of the purchase-money the said party of the second part, in his said capacity, furnished certain promissory notes of Belleville Iron-Works Company to the said parties of the first part, under the firm and style of Cook & Fallon, all dated the ninth day of March last, and payable respectively at three, six, nine, and
220 twelve months after date, making together the total balance of one hundred and thirty-one thousand eight hundred and fifty-four dollars sixty-seven cents, the receipt of which promissory notes, as also of the cash payment, being to them made, the said parties of the first part hereby acknowledge, and full discharge and acquittance for the same hereby grant.

Now to these presents intervened Richard Bartlett Sumner, of this city, herein acting as well for himself as for his co-owners of said Belleville Iron-Works, and the machinery thereof, under and by virtue of the power to him by them granted, who, having taken due cognizance of the foregoing, declared that for himself and his said co-owners he has no objections to the transfer and assignment of the lease of said Belleville Iron-Works as is herein made to and accepted by the said party of the second part, in his said capacity, and accordingly, for them, accepts the said Belleville Iron-Works Company as tenants of said works
221 under said lease. And also intervened Edward William Sewell, owner of the office No. eleven, Commercial Place, who also, after taking cognizance as aforesaid of the transfer of the lease of said office as above, accepts said company as his tenants therefor, under the terms of said lease.

Thus done and passed in my office at New Orleans aforesaid, in presence of Alfred A. Ducros and Edward O. Willard, competent witnesses, who have hereto signed their names, together with said appearers, and me, notary.

(Original signed)

B. FALLON, *President.*
J. J. PERSON.
R. B. SUMNER.
F. W. C. COOK.
E. W. SEWELL.
ALFRED A. DUCROS.
EDW. O. WILLARD.
R. BRENAN, *Not. Pub.*

I certify the foregoing to be a true and correct copy of the original act of record in my current register.

222 In faith whereof I have hereunto subscribed my name, and affixed the impress of my official seal, at New Orleans, this seventh day of April, eighteen hundred and fifty-seven.

(Signed) R. BRENAN, *Not. Pub.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Document "A," introduced in evidence by plaintiff.

NEW ORLEANS, *December 5th*, 1857.

Mess. J. JEFFRIES & SON, *Philadelphia:*

GENT'N: We addressed you under date of the 11th ult., since which time we have fully investigated our affairs, for the purpose of ascertaining what proposition we could with safety make to our creditors. We find we shall be able to pay to each and all of our creditors, as their claims shall mature, one-quarter of their respective amounts in

223 cash or good bills receivable, without in the meantime selling or pledging in any way our very large stock of material, machinery, and manufactured work on hand for sale.

We require time sufficient to enable us to secure the services of an efficient manager, to re-organize and go ahead again under more favorable auspices, and to increase by new subscriptions on capital stock.

If the creditors grant us this time, say 9, 12, or 15 months, in equal proportions, on ¾ths of their claims from maturity, we feel assured that we shall be able to make the necessary arrangements to pay at maturity of the extensions, with 8 per c't interest. In a few days we propose a special agent to the North, with a full statement of our affairs. He will call on you for your signature to the proposed extension. We anticipate no difficulty whatever in obtaining the assent of all our creditors

224 here to this proposal, which will be binding only when accepted by all the creditors of the company.

If any of our creditors refuse to accede to this arrangement with us, and attempt to enforce their claims by law, no recourse remains to us except to go into court, and thus provide for an equal distribution of our property among our creditors.

We shall make no preferred creditors, but desire all to share exactly alike, whatever may be the situation in which we may find ourselves. It is, doubtless, obvious to you that if the control of the property is taken out of our hands by legal process, and sold, as is usual in such cases, by order of the court, the loss on our extensive stock of machinery and material must be very large; indeed, we are certain it would not produce enough to pay our creditors, but, on the contrary, result in a heavy loss to them.

Pending the arrival of our special agent in New York, Mr. Arthur Cook, our general agent there, will give you any further informa-

225 tion we may be able to transmit to him respecting our affairs.

Very resp'y,

(Signed) J. J. PERSON, *President.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Two bills of cost offered in evidence by plaintiff.—Filed March 19th, 1860.

Fourth district court of New Orleans.

1859.

May	10th.	Petition of appeal, order, & bond	10
June	2d.	Issuing copy & cit. to Person	2 50
			$2 60

I certify that the costs of appeal in the above case amount to the sum of two dollars and sixty cents.
New Orleans, 19th March, 1860.
(Signed) J. O. CHALON, *Clerk.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

226 JAMES JEFFRIES
vs.
J. J. PERSON, PRES'T & ALS. } No. 12851.

Fourth district court of New Orleans.

1859.

May	10th.	Petition of appeal, order, bond, and citations	$2 50
June	2d.	Issuing, &c., cit. to Person.....	2 50
		Record of appeal	12 00
			$17 00

I certify that the costs of appeal in the above-entitled case amount to seventeen dollars.
New Orleans, March 19th, 1860.
(Signed) J. O. CHALON, *Clerk.*

Plaintiff offers in evidence the bill of cost of the clerk of the supreme court, to be furnished.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

227 Sheriff's return of the order of sale of the lease of the premises in the suit of The Belleville Iron-Works Company vs. Its Creditors, offered in evidence by plaintiff.

Order.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

SATURDAY, *the 25th day of February*, 1860.

Present, the Hon. J. W. Price, judge.

BELLEVILLE IRON-WORKS CO. *vs.* ITS CREDITORS. } No. 12890.

The rule herein taken by C. Roselius for R. B. Sumner and others on the 20th instant came on to-day for trial, C. Roselius for plaintiffs in rule, Benjamin, Bradford & Finney for defendants therein, when, after hearing pleadings and counsel, and no objections being assigned why the order for the sale of the lease should not be granted, it is ordered that said rule be made absolute, and that the syndic proceed to sell the said lease according to law, and on the terms and conditions fixed by the creditors at their meeting of the 25th November last. And
228 it is further ordered that the purchaser be required to give bond and security in the sum of five thousand dollars for the faithful performance of the obligation imposed upon him by the adjudication.

Sheriff's return.

Received, New Orleans, February 28th, 1860, and, pursuant to the within order, I did advertise for sale the lease within referred to on the twenty-eighth day of February, 1860, in the following manner, to wit: By advertisements, composed in English and French, announcing the sale to take place at the City Hotel, Common street, between Camp and Magazine streets, on the 10th day of March, 1860, at 12 o'clock m. Said advertisements were inserted in English & French in one paper in the city of New Orleans, to wit, in the Daily Delta, from the twenty-eighth day of February, 1860, to the date of sale, being full ten days from the date of the first notice given in said paper. Said advertisements were in-
229 serted and published in said newspaper on the 28th day of February, 3d, 6th, 8th, & 10th days of March, 1860, both in English and French; and after having further complied with and performed all the additional previous legal requisites, did expose the same at public sale according to law at the said City Hotel, Common street, between Camp and Magazine streets, on the said 10th day of March, eighteen hundred and sixty, at 12 o'clock m., having first announced in a loud and audible voice the terms and conditions herein expressed and specified, when A. Converse, being the highest and last bidder, the said property was adjudicated to the said A. Converse for the price and sum one thousand dollars per annum, payable quarterly, of which amount of sale nothing came into my hands. And at the time and place of sale I did, at the request of the syndic of the creditors of the Belleville Iron-Works Co., read verbatim and in a loud and audible voice the following extracts from the deliberations of the creditors of said Belleville
230 Iron-Works Co., taken by Theodore O. Starke, notary public, in this city, dated November 25, 1859, who declared that he recommends that the unexpired term of the lease of the Belleville Iron-Works be sold at public auction without reference to the terms of the present lease, and for the most it may bring, payable quarterly, the pro-

ceeds of the sale to be for the account of whom it may concern, and the sale to be open to the competition of the lessors as bidders, without prejudice to the present, or to the right of either party thereto as they now exist at law, provided that the consent of the lessors can be obtained to cancel a certain clause in the present lease requiring the property to be used for the exclusive purpose of a machine-shop, and also to cancel another clause in said lease requiring that the name of the property shall not be changed.

Returned October 19th, 1860.

(Signed) MICH'L DE ARMAS,
D'y Sh'ff.

	Printing, D'y Delta	$15 00
	Sheriff's fees	4 75
	" commission on sale	10 00
231	Process-verbal of sale	1 00
	Due & owing	30 75

Sheriff's sale.

BELLEVILLE IRON-WORKS COMPANY
vs.
ITS CREDITORS. } No. 12890.

Fourth district court of New Orleans.

By virtue of and in obedience to an order of sale of date February 25th, 1860, and to me directed by the hon. the fourth district court of New Orleans in the above-entitled matter, I will proceed to sell at public auction at the City Hotel, Common street, between Camp and Magazine streets, on Saturday, the 10th day of March, 1860, at 12 o'clock m., for account of the creditors of said insolvents, the lease of the Belleville Iron-Works, to expire the 31st December, 1865, surrendered by said insolvents to their creditors.

Terms: The rent to be paid quarterly on the first of January, April, July, and October of each year. The purchaser to give bond and security in the sum of $5,000 for the faithful performance of the obligation imposed upon him by the adjudication.

232 Feb'y 28th, M'ch 3d, 6th, 8th, 10th.

(Signed) E. T. PARKER,
Sheriff of the Parish of Orleans.

LA COMPAGNIE DITE BELLEVILLE IRON-Works
vs.
SES CREANCIERS. } No. 12890.

Quatrième court de district de la Nouvelle Orleans.

En vertu d'un order de vente, rendu le 25 fevrier 1860, et a moi addresse par l'honorable le 4me court de district de la Nouvelle Orleans, dans l'affaire ci-dessus, je proceder le samediai, 10 de mars 1860, a midi, a l'Hotel de la Cité, rue de la Commune, entre Magazine & Camp, pour le

compte des creanciers de l'insolvable a al vente publique et adjudication *de la* bail de la fonderie dite Belleville Iron-Works, expirant le 31 dec. 1865, abandonné par l'insolvable a ses creanciers. Conditions.—Le loyer payable par quartiers les premieres de janvier, avril, juillet & octobre, de chaque année. L'acquereur se fournira son bon pour la somme de $5,000, avec securité a l'effe de guarantir la fidele execution de l'obligation a lui imposée par l' adjudication.

"(Signed") E. T. PARKER,
Sheriff de la paroisse d' Orleans.

233 (Feb. 28th, March 3d, 6th, 8th, 10th.)

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Defendants offer in evidence entry on the minutes of the company under date of the 23d May, 1857. Copy to be furnished.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939

Document D, offered in evidence by the defendants.—Filed March 19th, 1860.

NEW ORLEANS, 13*th July*, 1858.

COMMITTEE OF DIRECTORS, BELLEVILLE IRON-WORKS:

GENTS: Informed by Mr. Fallon in New York, that you required a managing engineer, I came to this city with the hope of making ar-
234 rangements with your company; with the view of informing myself upon what terms I would connect myself with the business. I have examined the premises, tools, stock, &c., and also the balance-sheets, and by request address you on the subject, and beg to submit the result. To ascertain the present condition of the business, I took the balance-sheet of 30th June, 1858, and find the amount of bills payable and payable ledger balances to be $141,646, and the amount of bills receivable and collectable ledger balances $21,356, leaving a balance due creditors of $120,290; in addition to which there is an item of rent due, not included in above. To pay these $120,290 there is the amount of inventory taken November, 1857, $163,835, deducting $10,000 estimated amount of material used since that date—$153,835.

The value of a great portion of the property embraced in the inventory fluctuates very much; if business prospects were unusually good, and competent engineers in market, the highest prices could be had. Again if those in the business were taking stock with the view of
235 continuing the same, a more moderate estimate should be taken; and again if compelled to sell off it is difficult to fix any price.

I have examined the inventory, and, as nearly as I could, reduced it to a mediun valuation, such as I think fair, should the business be continued, viz, $76,011. The debts being 120,290, leaves a deficit of $44,279. I am sorry my examination has led to so unsatisfactory a result, both for your sake and my own.

Yours, very respectfully,
(Signed) THOS. DAVISON.

	Inventory ac't 1857.	Present value. July 6th, 1858.
Coal	4,549	4,549
Steel	459	459
Bar-iron	5,037	5,037
Boiler do	3,643	3,643
Sheet do	1,949	1,949
Pig do	9,584	7,667
Shafts	1,899	1,513
Copper & br	3,679	2,943
Scrap	6,421	4,495
Sundry m	12,790	8,953
Stock fix	43,345	21,677
Flasks	14,177	4,177
Tools	4,945	2,473
Improvements	7,203	1,000
Manuf'e stock	17,376	8,696
236 Patterns	26,778	6,778
	163,835	86,011
Deduct material used		10
		76,011

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Extract from the minutes of the board of directors of the Belleville Iron-Works Company offered by defendants.—Filed March 22d, 1860.

The following extracts from the minutes were offered in evidence, (copies to be furnished.)

1st. From minutes of 23d May, 1857, (relative to Cook's subscription.)

2d. From minutes of 15th Dec'r, 1858, (relative to Fallon's subscription.)

3d. From minutes of 14th July, 1858, (resolution.)

4th. From 2d November, 1857.

5th. From 14th & 15th Dec'b'r, 1858.

(The proceedings of 15th Dec'b'r, 1858, are already on file.)

237 Extracts from the minutes of proceedings of the board of directors of the late Belleville Iron-Works Co., which were offered in evidence by defendant's counsel, in the case of Jeffries & Sons vs. The Belleville Iron-Works Co., J. J. Person, and R. Wells, before the fourth district court, March 19th, 1860:

1st. From minutes of 23d May, 1857.

A communication from Mr. F. W. C. Cook was received, representing his inability to meet his notes for stock subscribed to by him, owing to the liquidation of the affairs of Cook & Fallon resulting differently from what they anticipated at the time the subscription was agreed to by him, he having depended on Mr. Fallon's representations. So situated he brought the matter before the consideration of the board, leaving to them any action they would please to take. The board concluded to take no action for the present but to leave the matter in suspense. On the reading of the above it was remarked that the board had agreed

238 to consent to Mr. Cook's selling $15,000 of the stock subscribed

to by him, for the purpose of meeting his notes to the co., but that they required him to retain $10,000 and leave the settlement for the same in suspense until the return of the members of the board after the summer's absence.

2d. From minutes 15th December, 1858.

The following communication was received by the board:

NEW ORLEANS, *1st December*, 1858.

GENT'N: I regret much my inability to pay my note for $5,000 for the last instalment of $25,000 subscription to the stock of the company. I have lost everything I had which was in said stock. This is known by some of the members of the board, as a matter of certainty, and I am ready to any one concerned who may desire it my books, and to give positive satisfaction of my position. I would wish to be spared the unnecessary mortification of going into court, which would
239 not be productive of good or of benefit to any one. Other parties to whom I am indebted have agreed to release me, the circumstances being as they are, and I beg you to do the same, offering that I will raise $500 to give you, which is much as I can well propose to pay. I cannot expect much more from the new business I have undertaken than enough to support my family.

Respectfully,
(Signed) B. FALLON.

In view of the truthfulness and force of the representations made in preceeding communication, the members of the board agreed and passed the following resolution:

Resolved, That the proposition of Mr. B. Fallon to compromise the claim of this company against him be accepted, (and that this application be spread upon the minutes,) provided a majority of the creditors in amount give their consent in writing.

3d. From the minutes 14th July, 1858.

240 Mr. Sumner, as the only member at the moment in the city of the committee appointed by the board, reported, on behalf of said committee the proceedings of the secretary under their directions, for over two months in the North; during which no pains or exertions have been spared to obtain the requirements of the company for re-organization, say a trustworthy and efficient manager to take hold of the concern, making an investment in it himself.

Mr. Sumner reported that the secretary had returned on the 4th instant, bringing with him a Mr. Davison, a person represented to be of superior merit on account of his character and title to confidence, and equally so for his practical attainments, ability, and experience in the business. Mr. Sumner stated that Mr. Davison had come to look into our affairs with the idea that he might join us if he felt perfectly safe, and in that case was disposed to make a considerable investment. Mr. Sumner stated that Mr. Davison has, from the moment he reached the city to the present time, say, for ten days, been engaged con-
241 stantly in examining the condition of our affairs, by verifying, according to his own ideas, the value of the property on the premises and connecting it with our liabilities, as shown by our balance-sheets. Mr. Davison has also made a very particular enquiry of the

character of the foundry business here, as disconnected with our establishment or management. On this latter head Mr. Davison's enquiry has been very satisfactory, and he is satisfied that there is ample inducement for any one to engage in the business, himself feeling disposed to do so at once, if starting on a proper footing. But he considers it impracticable to have any understanding for a connection with us on a plan of continuance or re-organization, because he shows the company as embar'assed beyond redemption; which showing is owing to the prices affixed by him to the property, making a difference in the aggregate with the amount of the inventory taken last November by Messrs. Grinnell and Marsh, of nearly $90,000.

242 Mr. Sumner stated that during Mr. Davison's stay here, the committee had been in constant communication with him, and gone into the details with him, and finally giving up the idea of arrangement with him, had begged his attendance at the meeting, so that the board might have his report direct from him and have an opportunity of asking for any explanation or making any desirable observation.

On this Mr. Davison addressed the board, confirming the statement of Mr. Sumner as connected with himself, and expressing his disappointment at having found matters in such a condition, as, with his ideas of prudence, to preclude his joining us; for he had come disposed to do so, if practicable. He handed a written statement which he had prepared, showing his views of the affairs of the company. By this statement he reduces the value of the inventory taken by Messrs. Grinnell & Marsh about 50 %. He deducts about $5,000 from the total of the amount of debts to be collected by the company, making, in the aggregate, a difference of over $90,000 with our examination of assets; and as our liabilities are preserved at the original figure, and since the suspen-

243 sion of active operations, in November, we have been burthened by interest for the cost of extension, about $10,000, rent, and excess of running expenses over receipts, by taking Mr. Davison's estimate of assets, and the other figures of our last balance-sheet of 30th June, he makes us appear with a deficit of $44,279. Some conversation followed between Mr. Davison and the members of the board, in the course of which Mr. Davison was asked whether he would join us, provided we admitted him on the basis of his estimate of our assets. He replied that he would not even so join us. Mr. Davison having withdrawn, the members of the board, considering the uncertainty of effecting arrangements as first contemplated, and the increase of difficulties from the time already consumed in the attempt, they thought they might as well decide at once upon liquidation, and only look to the protection of creditors, and to serve them fairly and as advantageously as the circumstances themselves would admit.

244 The following resolutions were passed and unanimously agreed to:

Resolved, That an advertisement as follows be inserted in a New Orleans paper, in the New York Herald, and Philadelphia Enquirer, on alternate days during a month:

"FOR SALE.—The Belleville Iron-Works Company offers for sale their entire property, consisting of a large quantity of valuable tools and machinery suitable for foundry work, all being of an improved description; also a large assortment of patterns and the stock of materials on hand, consisting of pig, scrap, sheet, and boiler iron, coal, brass, copper,

&c.; the entire property, with unexpired lease of the premises for about eight years, will be sold in mass only to satisfactory parties on very favorable terms. For terms apply at the office of the company at the works in Algiers or by letter addressed to the company, box 230, post-office, New Orleans."

Resolved, That the committee nominated to negociate with Mr. Tyler and others, composed of Mr. Wood, Mr. Sumner, and Mr. Hanne-
245 man, be, and are hereby, authorized to take into consideration and offer for purchase that may be made, &c., &c.

4th. From the minutes of 2d Nov'r, 1857.

A report was read of Mr. R. Wells, who had acted as president pro tem. during the recess of the board, in which he recites circumstantially the proceedings of the company and its operations while he filled the temporary post assigned to him. After said report was read a general discussion was had on the position of the affairs of the company and on other points referred to in said report. The following resolutions were proposed and passed:

Resolved, In view of the exigencies of the times and the unprofitableness of our business, that it is necessary, under the present circumstances, to reduce as much as possible all expenditures, and that no new contracts or work be undertaken by this company until further ordered by this board.

Resolved, That Messrs. Wells and Fallon be authorized to take
246 charge of all the property and work of the company, and employ the hands necessary to execute and finish the unfinished work and contracts now on hand, and that they be, and are hereby, directed to discharge the employees of the company as fast as they deem practicable, in accordance with the foregoing resolutions.

Resolved, That the services of Mr. F. W. C. Cook and Mr. Fred'k Cook be dispensed with forthwith, and that a copy of these resolutions be served upon them, &c.

5th. From the minutes of the 14th Dec'r, 1858.

The board was convened to take into consideration a proposition from Seward Porter, for himself and others, to purchase the property of the company, the terms being $60,000.00, in yearly instalments, without interest, for all the property of the company as it now stands, except bills receivable and debts collectable as balances of accounts, said instalments being unequal, say: 1st for $5,000; 2d, for $7,000; 3d, for $10,000; 4th, for $11,000; 5th, for $13,000; and 6th, for $14,000= $60,000, the proposing parties assuming the unexpired portion of
247 the company's lease of the buildings, and offering as security over and above their personal responsibility any mortgage lien on the property that be not incompatible with the free prosecution of the business.

The board discussed the peculiarities of the proposition, and ordered the letter to be filed and the stockholders to be convened the next day to decide on the acceptance or non-acceptance of the proposition, and also on the action to be taken about the affairs of the company, so as to bring them to a definite close.

6th. Minutes of the 15th Dec'r, 1858, at a called meeting of the stockholders.

(Already copied on page .)

The foregoing, written on 2 letter and 6 foolscap pages, is a true and

faithful extract from the minutes of the proceedings of the board of directors of the Belleville Iron-Works Co., as kept by their secretary and signed and certified to by their president, now in my official custody.

(Signed) R. WELLS, *Syndic.*

248 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Report marked X, of the treasurer and president of the Belleville Iron-Works Company, offered in evidence by defendants.—Filed March 19, 1860.

NEW ORLEANS, *October* 26, 1857.

To the president and directors of the Belleville Iron-Works Company:

The undersigned, treasurer and president pro tem., beg leave respectfully to submit the following report of the administration of the company's affairs during the recess of the board just expired and the absence of their president. As the most convenient and, perhaps, most acceptable mode of presenting it, he has adopted the form of a simple narrative of facts in the order in which they have transpired.

Among the certified minutes of the proceedings of the board at its 6th meeting, under date of the 6th May last, occurs the following recital:

249 The board proceeded to name him (Mr. Wells) treasurer of the company, after which the board agreed that he should act as president pro tem. during the absence of the president, and that he should have full powers, &c., &c., to act in that capacity and represent the board; and again, he (the sec'y) was told that the scale of expenditure was now too high; that they wanted it reduced in a gradual and prudent manner, and then kept low; that the study of the introduction of economy in every way was imperative; that this duty involved upon him and Mr. Wells; that they have full powers given them to require the manager of the works to conform with what they may think necessary for the purpose, &c., &c.

When the undersigned first came to the discharge of the duties and exercise of the functions assigned to him by the board, as before recited, he found the work already laid out for the first 6 or 7 months of the company's operations, and the company fully and formally committed by contract to the time and the terms of its execution.

250 From this simple statement of the facts as they existed at the time, it will at once appear to the board that, to whatever objections these contracts may be amenable on the score of profit or of prudence, and however much they may transcend the line of policy prescribed in their instructions, the undersigned must stand before the judgment of the board entirely exonerated from all accountability therefor. Thus much he has therefore deemed it proper to premise, in simple justice to himself, but it is no less due to his respected colleague to add that, had the undersigned found the field entirely clear and unoccupied, and not a contract taken, he should still have had to rely almost altogether for the estimate and graduation of the terms of contracts upon the mechanical manager of the works, upon whose technical judgment and official fidelity the company has, after all, to depend for the successful prosecution of their business.

The first object which attracted the investigation of the under-

signed was the cost-books, which purport and are designed to be a faithful register of every item of labor and material expended upon work in the progress of its execution, and which together constitute its cost, and, per contra, of the amount charged for it, or its selling price. Each account in these books, therefore, if correctly kept, ought, when closed by the completion of the job or contract, to show the exact amount of gain or loss accruing on it. By collecting from these books the footings of all the accounts which has thus far been closed by the completion of their respective jobs, and finding thence the average profit on the whole, the undersigned was surprised to observe how far it fell below what he had been repeatedly assured was the current profit of our business, and this, too, notwithstanding the percentage upon the sum of the specific cost charges, added to cover contingent expenses, or such as from their general nature do not admit of being specifically charged, fell short of what it ought to be by 50 %, and which, therefore, if raised to the actual ratio those expenses bear to the more specific cost, would reduce still further the resulting profit. The undersigned first called the attention of Mr. Fallon to these discoveries, and together they drew to them the notice of the manager of the works.

The latter endeavored to reassure us in regard to the general average profit of our business, by representing that the jobs which had thus far been completed, and which had formed the basis of the calculation of the undersigned, happened to belong to a class which did not admit of a liberal rate of profit, therefore offered no criterion of the average rate of profit realized on our whole business; that the average profit upon job-work, he was sure, would run as high as 40 or 50 % upon its cost, and that, on contracts, could not fall short of 30 %. On the other fact, however, he took direct issue with us, and insisted pertinaceously in the face of the convincing testimony of facts and figures, that the percentage allowed for contingent expenses was sufficient, and could at last be brought to yield only a reluctant, tacit acquiescence in the reform we introduced in regard to that item—a very material one, by the bye, when we consider the effect this alteration has on the graduation of prices, and, consequently, of profits. By no means satisfied with Mr. Cook's specious assurances and explanations, the undersigned pushed his researches still further and with a more scrutinizing attention to detail in the cost and time books, and he soon found them so to abound in errors and so car'lessly and imperfectly kept as not to be entitled to any reliance or credit as an exponent of the real cost of our business. Despairing of deriving any reliable information respecting our business from this quarter, the undersigned fell back upon the general books, and availing himself of an opportune moment in the progress of our business, when nearly all the work which had been taken had been finished and turned out, and when our stock of materials happened at the same time to be reduced so low as to render it practicable to estimate their value very nearly, he proceeded from these data, and those furnished by the general books, to draw up a proximate statement or synopsis of our business for the first 6 months after it had commenced, and although prepared, from what he had observed of the manner in which the business was conducted, and the waste, extravagance, and want of system that prevailed in the mechanical department, to expect no very favorable result, he was still surprised to meet so bad a showing as it proved to be; for, instead of profit, it exhibited an absolute loss.

Really startled at so unexpected a development, the undersigned

submitted his work to Mr. Fallon, with the request that he would revise it, and in the hope that his greater familiarity with the business might enable him to detect some errors or omissions
255 which might vary the result. So extraordinary and improbable did the statement thus produced appear to Mr. Fallon, and so incompatible with the principles and rules which experience had established in our business for estimating work, and the proportions which the different constituents of cost should bear to the whole and to each other, that at first he could not bring himself to believe it possible for it to be correct, but after examining it carefully in detail and scrutinizing the data in which it was predicated, he also became satisfied of its general correctness. Mr. Fallon and the writer next submitted it to Mr. Cook with the view of bringing his practical knowledge to bear upon the subject, and elicit, if possible, any errors which might have crept into the work, and solicited him to give it a minute and careful examination; to suggest any additions or corrections which might occur to him as proper to be made, and to furnish us with a list of the manufactured stock of the company on hand, with their estimated
256 values, which he alone could furnish, and which was required to complete our statement, and show us very nearly how our business stood. Mr. Cook took the document home with him, ostensibly to examine it and supply us with the examination sought, but after retaining it for 3 weeks without ever referring to the subject, and then being called on for its return, he delivered it back without a word of comment or the least attempt at explanation. Mr. Cook's contumacy in thus withholding from us all information in regard to our stock of manufactured work on hand, belonging to the company, without which our proximate statement could not be rendered complete, determined Mr. Fallon and the writer to have a regular account of stock taken at once, and as no reliance could be placed in Mr. Cook's fidelity, they deemed it advisable to call in the services of disinterested third parties, of *the* technical competency and business character and position to impart the requisite authenticity and credit to the proceeding. We ac-
257 cordingly engaged the services of Mr. Grinnell, of the firm of the Leed's, and Mr. Marsh, U. S. inspector of engines for this port for the duty, gentlemen possessing, in an eminent degree, as we are assured, the qualifications which we required, and requested Mr. Cook to co-operate with them, and lend them every assistance in his power to enable them to make a full and complete return of all our property and stock. But the latter gentleman only spurned our application, and not only refused to render the assistance which his duty demanded of him, but, raising captious and vexatious objections at every step of the process, and throwing every impediment in the way, to confuse, retard, and embarrass the proceeding, did all he could to oppose, and, if possible, frustrate the execution of the work of taking an inventory, or to destroy its credit, when taken, in which perfidious object the undersigned is disposed to think he has succeeded to some extent, for while the inventory furnished by Messrs. Grinnell and Marsh, under such adverse
258 and perplexing circumstances, is sufficiently full and accurate to satisfy him that Mr. Cook's managment has thus far been very disastrous to the company's interests, and that its continuance cannot fail to involve them in speedy and inextricable ruin, yet the startling figure which appears at the debit of profit and loss in the balance-sheet which the undersigned has made out upon that inventory as a basis seems to him altogether too large to express the loss which can possibly have been sustained by our business in the brief space of time that has

elapsed since the organization of the company, conducted, too, as it has been, under circumstances so propitious, whether we consider the healthiness of the period, the sufficiency of labor, or the abundance of work, with no losses of any note from bad debts, and no ostensible cause for any other. So extraordinary a deficit it would seem impossible to be accounted for by the ordinary losses incident to managerial lack
259 of vigilance, to want of due attention to economy in labor and material, or to defective judgment in estimating contracts, but only to be explained by supposing the existence and steady practice of a system of wholesale fraud and plunder.

It would require a more voluminous report than the writer is disposed to inflict upon the board to contain all the charges which might be preferred against Mr. Cook. He will confine himself to the notice of but 3.

The first is his studied and habitual evasion of the provisions in the 4th article of the by-laws of the company, which reads:

"But whenever a contract is required in writing, or the amount of work exceeds by estimate $1,200, the acquiescence of the superintendent or his signature to the contract shall be obtained."

His strategy for eluding this plain provision is first by avoiding to have his contracts for work committed to writing at all, and next in making his entries of orders for the same in his order-book, to
260 suppress all mention of the stipulated price, leaving the entry blank in regard to the consideration agreed upon, whenever it exceeds the amount of $1,200.

This management enables him, in cases where his interest or inclination prompts him to do so, to keep the supervisory administration of the works entirely in the dark in regard to the transactions in his department, and virtually supersedes its power and utility, and concentrates all the powers, responsibilities, and control of our business in himself.

The 2d delinquency proposed to be noticed is nearly allied to the first, and indeed may be regarded as its natural fruit or offspring. The case of Messrs. Segar and Beltran is referred to, the merits and nature of which, to save space, *is* left to be gathered by the board from the accompanying copy of a communication of the president pro tem. to Mr. Cook on the subject, and the appended certificate of the first-named gentleman to the verity of the statements herein contained.

261 The 3d and last piece ot malfeasance on the part of Mr. Cook with which the undersigned will trouble the attention of the board, is a daring and flagrant trespass on the peculiar province and rights of the financial department of our concern, and usurpation of its powers and functions by collecting and receipting for, in the name of the company, and appropriating to himself, money due on account to the company, without the knowledge or authority of the department especially charged by the laws of the company with that duty, in the face of a refusal of the treasurer to grant an application from him the same day for an advance on his future wages. The case referred to is that of Mr. Hughes, of whom he collected $700 of the company's money and receipted for and appropriated the same under the circumstances recited above.

With these accumulated and accumulating evidences before them of Mr. Cook's reckless and ruinous management, of his refractory
262 insubordination and treachery to the interests of the company, in short, of his general incompetency for the position he occupies, and the imminent necessity for his instant ejection, the question may naturally arise in the mind of the board, why did not Mr. Fallon or Mr.

Wells interpose to arrest his headlong career, and, if no less decisive measure could be made effective, by having recourse to the ultimate plenary powers vested in them by resolution of the board and discharging Mr. Cook?

One reason that influenced our forbearance to Mr. Cook was our anxiety to get a few contracts off our hands as soon as possible, which were not yet quite finished, and a failure to complete which within the stipulated time would subject us in one case to a heavy penalty, and in others to claims for damages, and our apprehension of the inevitable delay and deferment of their completion, which must attend a violent and sudden change in the mechanical management of the works.

263 Another, which carried no less weight with us, was the consideration that the discharge of Mr. Cook necessarily involved the appointment of a successor, and however competent we might have judged our authority to be to dispense with him, we had no greater inducement to offer for a suitable person to succeed him than the temporary tenure of his office during the recess of the board, contingent upon and subject to their ratification or otherwise, when they met; and with such qualified inducements in our hands, we could not hope to secure the services of the talents, capacity, and character competent to manage a concern of the magnitude and importance of ours; or that such talents, capacity, and character, if found, could even be brought seriously to entertain a proposition which would involve the surrender of perhaps a present lucrative situation in possession for the mere prospect of permanently succeeding to another, only more so.

264 But a third reason, and the one that decided our action, was that the president of the company himself was at the time in convenient communicating distance of us, and we preferred in a matter of such importance to refer the whole question with all its attendant responsibilities and duties to him, to receive such action and disposition at his hands as his judgment might dictate; and this was the course adopted by us, so soon as we became satisfied of the actual state of our affairs, and our inability to control Mr. Cook. No sooner did this become manifest than a report was dispatched to Mr. Person, apprising him of the actual state of things at the works, and urging the necessity of his immediate return and the speedy interposition of his authority to arrest the reckless career of Mr. Cook, and otherwise protect the interests of the company. On his arrival, the whole business was placed in his hands, where it has remained to the present time, the writer and Mr. Fallon merely acting in relation thereto under the specific directions and immediate orders of the president.

265 For an exposition of the financial affairs of the company, the board is respectfully referred to their secretary, Mr. Fallon, whose greater conversance with that branch of our business and interests, better qualifies him for furnishing it than the undersigned could be expected to be.

And in connection with this subject the undersigned cannot permit the present occasion to pass without availing himself of it to bear testimony to the meritorious services of the officer last mentioned—to the devotion, zeal, and energy which has signalized his management of that department of the company's affairs. It is indeed almost entirely to his indefatigable exertions and indomitable perseverance, supported by no little financial tact, that the company is indebted for the maintenance, thus far, of the credit and the keeping up of the active operations of our works in spite of busy and mischievously har'assing machinations of treachery from within, and in the face of perhaps the most disastrous

and universal monetary panic and revolution that has ever scourged our community from without.

266 All of which is respectfully submitted by the company's faithful & ob'd't serv't,

(Signed) R. WELLS,
Treas., late President pro tem.

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Certified inventory marked K, offered in evidence by defendant.—Filed March 19, 1860.

Recapitulation of the inventory made for the Belleville Iron-Works, and closed 12th October, 1857.

Coal	4,549
Steel	459 01
Bar-iron	5,037 80
Boiler "	3,643 64
Sheet "	1,949 44
Pig "	9,584 76
Shafts	1,891 28
Copper & brass	3,679 45
Scrap-iron	6,421 95
Sundry materials	12,790 02
Stock fixtures per 1st inventory	43,354 13
Flasks " 2d do	14,177 07
Tools	4,945
Improvements	7,203 92
Manufa't's work, stock	17,376 95
" " contracts	58,275 12
" " jobs	968 90
Patterns per first inventory	26,778 05
	223,085 29

(Signed) EDW'D GRINNELL.
" JOHN MARSH.
" E. W. HOOKE.

Defendants introduce in evidence a printed copy of the by-laws of the Bellaville Iron-Works Co., to be furnished.

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Order.—Cause submitted. Minutes, March 19, 1860.

This cause came on to-day for trial—Simonds and Fenner, for plaintiff, Benjamin, Bradford & Finney, for defendants.

After hearing pleadings, evidence, and arguments of counsel,

268 the court took the same under consideration.

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Extract from minutes.—Filed March 22, 1860.

(Extracts from the minutes of the Belleville Iron-Works Company, filed this day, already copied on page 57.)

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY, R. Wells, syndic & al. } No. 12939.

Reasons—Filed March 23, 1860.

The plaintiff sues to recover of defendant the sum of $3,662.86, and also to have annulled and vacated the order of this court, granted on the 29th December, 1858, upon the petition of the defendants to make a voluntary surrender of their property to their creditors, whereby all
269 proceedings against the property of said defendant were stayed.

On the 26th January, 1860, plaintiffs filed a supplemental petition making J. J. Person and Richard Wells, the president and syndic of said corporation, parties to this suit, and claimed judgment against them for the various reasons more particularly set forth in said supplemental petition. The allegations of the original petition are fully made out by the evidence; but those of the supplemental petition are not; but, on the contrary, the allegations of said supplemental petition are directly negatived and disproved by the testimony of the witnesses offered by defendant. The acts of Person, as president of the corporation, are unimpeached by the testimony, and those of Wells are shown to be those of a person acting in good faith under an order of court believed at the time to be legal and valid. He acted under the power and authority of the order of the court and the authority vested in him by the action of the meeting of the creditors of the corporation,
270 and his acts as such are not sufficient to make him liable to plaintiff for the amount of the note sued on. He is protected by the order of the court and the action of the creditors of the corporation, and if plaintiff has sustained any damage (which is not proved) it is damnum absque injuria.

Therefore, considering the law and the evidence and the reasons of the Supreme Court for the decree filed herein, it is ordered, adjudged, and decreed that the order of this court, entered on the 29th Dec'r, 1858, in the case of The Belleville Iron-Works Company vs. Its Creditors, No. 12890 of the docket of this court, staying "all judicial proceedings against the property of said company," be vacated and annulled; and it is further ordered that the plaintiff do have and recover of the defendant, The Belleville Iron-Works Company, the sum of $3,262.86 & $16.31, exchange, and $3 costs of protest, with legal interest thereon from the 31st Dec'r, 1858, till paid, and costs; and it is further ordered, ad-
271 judged, and decreed that judgment be entered in favor of defendants, J. J. Person and Richard Wells, with costs.

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BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Judgment.

For the reasons assigned in the written opinion of the court this day

delivered and on file, it is ordered, adjudged, and decreed that the order of this court entered on the 29th Dec'r, 1858, in the case of The Belleville Iron-Works Company vs. Its Creditors, No. 12890 of the docket of this court, staying "all judicial proceedings against the property of said company, be vacated and annulled. And it is further ordered that the plaintiff do have and recover of the defendants, The Belleville Iron-Works Company, the sum of thirty-two hundred and sixty-two $\frac{86}{100}$ dollars, and sixteen $\frac{31}{100}$ dollars, exchange, and three dollars, costs of protest, with legal interest thereon from the 31st December, 1858,
272 till paid, and costs. And it is further ordered, adjudged, and decreed that judgment be entered in favor of defendants, J. J. Person and Richard Wells, with costs.

Rendered March 23, 1860.
Signed March 30, 1860.
(Signed) J. W. PRICE, *Judge.*

JAMES JEFFRIES
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BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Order: Rule.—Minutes, March 26, 1860.

On motion of Simonds & Fenner, of counsel for plaintiff, it is ordered that the defendants, The Belleville Iron-Works and A. Wells, personally and as syndic, and J. J. Person, personally, show cause on Friday next, the 30th instant, at 10 o'clock a. m., why a new trial should not be granted herein on the grounds on file.

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vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

273 *Rule—Filed 26th March*, 1860.

On motion of Simonds & Fenner, plaintiff's attorneys, it is ordered that the defendants, viz, Belleville Iron-Works Company and R. Wells, personally and as syndic, and J. J. Person, personally, show cause on Friday next, the 30th of March, 1860, at 10 o'clock a. m., why a new trial should not be granted herein, on the grounds that the judgment is contrary to law and evidence, viz:

1st. That the judgment seems to limit the annulment of the thereinrecited order of 29th December, 1858, to so much thereof as ordered a stay of proceedings, instead of annulling the said order fully and completely, and setting aside the surrender which was the remedy and relief plaintiff was entitled to under the allegations and prayer of his petition and the evidence received.

2nd. That the evidence shows that plaintiff was prevented from securing his debt by the illegal proceedings of R. Wells and J. J.
274 Person, in the pretended surrender and sale of the property of the Belleville Iron-Works Company.

3rd. That it appears from the pretended tableau of distribution that R. Wells illegally appropriated or paid monies belonging to said company, thus diminishing the ability of the said company to pay its debts.

Service accepted for all the defendants.
(Signed) BENJAMIN, BRADFORD & FINNEY,
For Defendants.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Order: Rule dismissed.—Minutes, March 30th, 1860.

The rule herein taken by plaintiff on the 26th instant for a new trial came on to-day—Simonds & Fenner for plaintiff; Benjamin, Bradford & Finney, for defendants. After hearing pleadings and counsel the court ordered that said rule be dismissed and a new trial be dismissed with costs.

275 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Fi. fa.

STATE OF LOUISIANA,
Fourth District Court of New Orleans, Parish of Orleans.

To the sheriff of the parish of Orleans, greeting:

We command you that by the seizure and sale of the property, real and personal, rights and credits, of the Belleville Iron-Works Company, in the manner prescribed by law, you cause to be made the sum of thirty-two hundred and sixty-two $\frac{86}{100}$ dollars, and sixteen $\frac{31}{100}$ dollars exchange, and three dollars costs of protest, with legal interest thereon from 31st December, 1858, till paid, and also the sum of sixty-six dollars and fifteen cents costs, as well as your own costs and charges, to satisfy a judgment rendered against the said Belleville
276 Iron-Works Company, in our fourth district court of New Orleans, on the 23rd day of March, 1860, in favor of James Jeffries; and how you shall have executed this writ, you make return to our said court, in seventy days, as the law directs.

Witness the Hon. John W. Price, judge of the said court, this 13th day of April, in the year of our Lord 1860.

(Signed) G. LUMINAIS,
D'y Clerk.

Sheriff's return.

Received, New Orleans, April 25, 1860, and on the same day, month, and year, I made general seizures in the hands of F. W. C. Cook, Richard Wells, and the Bank of America, and on the 30th of the same month and year made a similar one in the hands of A. Converse, all the rights, title, interest, money, or property which they or either of them might have in their possession or under their control, belonging to the defendants. From said seizure nothing, as yet, came into the defendants' hands.

277 No other property found, after due demand made of both parties, and this writ having expired, I made the return; and at the time of the returning of this writ, I requested the clerk of this hon. court to furnish me with a copy of the same, together with all my proceedings thereon, in conformity to law.

Returned July 2d, 1860.

(Signed) JOSEPH GROS,
D'y Sh'ff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Notice of seizure annexed to writ of fi. fa.

NEW ORLEANS, 30*th April*, 1860.

STATE OF LOUISIANA,
Sheriff's office, Parish of Orleans:

In the fourth district court of New Orleans.

To A. CONVERSE:

Please to take notice that by virtue of a writ of fi. fa., issued in the above-mentioned suit, I seize in your hands all the goods chat-
278 tels, lands, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession or under your control, belonging to the defendant, Belleville Iron-Works Co., which you will hand over to me.

(Signed) ROB'T SWAIN,
D'y Sheriff.

Sheriff's return.

On the 30th April, 1860, served a copy of this notice on A. Converse, personally.

(Signed) ROBERT SWAIN,
D'y Sheriff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Notice of seizure annexed to writ of fi. fa.

NEW ORLEANS, *April 25th*, 1860.

STATE OF LOUISIANA,
Sheriff's office, Parish of Orleans:

In the fourth district court of New Orleans.

279 To the BANK OF AMERICA, garnishee:

279 Please to take notice that, by virtue of a writ of fieri facias, issued in the above-mentioned suit, I seize in your hands all the goods, chattels, lands, tenements, rights, and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession, or under your control, belonging to the defendants, the Belleville Iron-Works Company, which you will hand over to me.

(Signed) JAMES STRAWBRIDGE,
D'y Sheriff.

Sheriff's return.

On the 27th April, 1860, served a copy of this notice on A. Fortier, cashier of the Bank of America, personally.

(Signed) ROBERT SWAIN,
D'y Sheriff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

280 *Notice of seizure annexed to writ of fi. fa.*

NEW ORLEANS, *April* 25, 1860.

STATE OF LOUISIANA,
Sheriff's office, Parish of Orleans:

In the 4th district court of New Orleans.

To RICHARD WELLS, garnishee:

Please to take notice that, by virtue of a writ of fieri facias, issued in the above-mentioned suit, I seize in your hands all the goods, chattels, lands, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession, or under your control, belonging to the defendants, the Belleville Iron-Works Company, which you will hand over to me.

(Signed) JAMES STRAWBRIDGE,
D'y Sh'ff.

Sheriff's return.

On the 7th May, 1860, served a copy of this notice on Richard Wells personally.

(Signed) ROBERT SWAIN,
D'y Sh'ff.

281 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Notice of seizure annexed to writ of fi. fa.

NEW ORLEANS, *April* 25, 1860.

STATE OF LOUISIANA,
Sheriff's office, Parish of Orleans:

In the 4th district court of New Orleans.

To F. W. C. COOK, garnishee:

Please to take notice that, by virtue of a writ of fieri facias, issued in the above-mentioned suit, I seize in your hands, all the goods, chattels, lands, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind, which you may now or hereafter have in your possession, or under your control, belonging

to the defendants, the Belleville Iron-Works Company, which you will hand over to me.

(Signed) JAMES STRAWBRIDGE,
Dep'y Sh'ff.

282 *Sheriff's return.*

On the 26th April, 1860, served a copy of this notice on F. W. C. Cook personally.

(Signed) ROB'T SWAIN,
Dep'y Sh'ff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Supplemental petition.—Filed April 25, 1860.

To the honorable the fourth district court:

The supplemental petition of the plaintiff in the above-entitled cause respectfully shows: That he has applied for a writ of fieri facias against the said defendant, the Belleville Iron-Works Co., to satisfy a judgment rendered against said defendant, to satisfy a judgment in the said cause for thirty-two hundred and sixty-two $\frac{66}{100}$ dollars, and $16.31 exchange, and $3 costs of protest, with interest on the same at the rate of 5% per annum from 31st December, 1858, till paid, and costs of suit; and
283 plaintiff has reasons to believe that the Bank of America, a corporation under the laws of the State, domiciled in New Orleans, and Richard Wells and F. W. C. Cook, all residing in this city, have property or effects in their possession, or under their control, belonging to the defendant, or are indebted to the said defendant, the Belleville Iron-Works Company.

Wherefore the plaintiff prays that the said Bank of America and Richard Wells and F. W. C. Cook may be made parties hereto, and cited and ordered to answer under oath, in writing, within ten days of the service hereof, the annexed interrogatories on facts and articles, in default of which that judgment pro confesso be rendered against them in solido, for the whole amount of said judgment, interest, and costs, and for general relief, &c., &c.

(Signed) SIMONDS AND FENNER,
Att'ys.

Interrogatories on facts and articles annexed to the foregoing petition.

284 Interrogatory 1. What property, goods, rights, credits, chattels, and effects have you in your possession or under your control, belonging to the said defendant, Belleville Iron-Works Company, at the service hereof and to the time of filing your answer? Was not the value thereof sufficient to satisfy the said judgment, interest, and costs? Give the particular kind and value of such property, effects, &c.

Interrogatory 2. Are you indebted to said defendant at the service hereof, or at any time up to the filing of your answer, in an amount sufficient to satisfy said judgment, interest, and costs? If nay, in what amount? Give a detailed account thereof.

Interrogatory 3. Have you in your possession, whether deposited

with you, (or by you deposited with another) any moneys, promissory notes, or credits belonging to the Belleville Iron-Works Company—and what is the amount thereof? Is it $5,000?

Interrogatory 4. (Answer to this interrogatory is required from
285 R. Wells only.) Have you received from the funds of the Belleville Iron-Works Company or from the proceeds of sale of its property any sum of money claimed by or paid to you, as commissions to you as so-called provisional syndic and definitive syndic, or otherwise, in certain proceedings in the fourth district court of New Orleans, entitled "The Belleville Iron-Works vs. Its Creditors. And what is the amount received by you? Does it amount to five thousand dollars?

(Signed) SIMONDS & FENNER,
Attorneys.

Order.

Let this supplemental petition be filed, and let the garnishees herein named be ordered to answer under oath and in writing within ten days from the service hereof the interrogatories herein propounded to each of them by plaintiff.

New Orleans, April 25, 1860.

(Signed) J. W. PRICE, *Judge.*

JAMES JEFFRIES
vs. } No. 12939.
286 BELLEVILLE IRON-WORKS COMPANY.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

The State of Louisiana to the Bank of America, through its president:

You are hereby cited to declare on oath what property belonging to defendant in this case, you have in your possession, or in what sum you are indebted to the said defendant and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Hon. John W. Price, judge of the said court, this 25th day of April, in the year of our Lord 1860.

(Signed) G. LUMINAIS,
D'y Clk.

Sheriff's return.

287 Received New Orleans, April 25, 1860, and on the 27th of the same month and year, served a copy of this citation and accompanying petition and interrogatories, on the president, directors, &c., of the Bank of America, by handing the same to A. Fortier, cashier of said bank, in person. Returned same day.

(Signed) ROBERT SWAIN,
D'y Sh'ff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

The State of Louisiana to Richard Wells, of New Orleans:

You are hereby cited to declare on oath what property belonging to defendant in this case, you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy
288 accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Hon. John W. Price, judge of the said court, this 25th day of April, in the year of our Lord 1860.
(Signed) G. LUMINAIS,
D'y Sh'ff.

Sheriff's return.

Received New Orleans, April 25, 1860, and on the 27th of the same month and year, served a copy of this citation and accompanying petition and interrogatories on Richard Wells, garnishee herein, personally. Returned same day
(Signed) ROB'T SWAIN,
D'y Sheriff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Citation.

289 STATE OF LOUISIANA,
Fourth District Court of New Orleans:

The State of Louisiana to A. Converse, of New Orleans:

You are hereby cited to declare on oath, what property belonging to defendant in this case, you have in your possession, or in what sum you are indebted to the said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable John W. Price, judge of the said court this 30th day of April, in the year of our Lord 1860.
(Signed) G. LUMINAIS,
D'y Clk.

Sheriff's return.

Received New Orleans April 30, 1860, and on the same day
290 served a copy of this citation and accompanying petition and interrogatories on A. Converse, garnishee herein, personally.
Returned same day.
(Signed) ROB'T SWAIN,
D'y Sh'ff.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Supplemental petition, &c.—Filed April 28, 1860.

To the honorable the fourth district court of New Orleans:

The supplemental petition of the plaintiff in the above-entitled cause respectfully shows:

That he has applied for a writ of fieri facias against the said defendant, (Belleville Iron-Works Co.,) to satisfy a judgment rendered against defendant in the said cause for $3,262.86, and $16.31 exchange, and $3.00 costs of protest, with legal interest on the said sums from December 31, 1858, 'till paid, and costs of suit. And plaintiff has reason to believe that A. Converse, esq., of New Orleans, has property or
291 effects in his possession or under his control belonging to the defendant, or is indebted to the said Belleville Iron-Works Co.

Wherefore plaintiff prays that the said A. Converse may be made party hereto, and cited and ordered to answer under oath, in writing, within ten days from the service hereof, the annexed interrogatories on facts and articles, in default of which, that judgment pro confesso be rendered against him for the whole amount of said judgment, interest, and costs; and for the general relief, &c.
(Signed) SIMONDS & FENNER, *Att'y.*

Interrogatories on facts and articles annexed to the foregoing petition.

Interrogatory 1st. What property, goods, rights, credits, chattels, and effects have you in your possession or under your control, belonging to the said defendant at the service hereof, and to the time of filing your answer? Was not the value thereof sufficient to satisfy the said
292 judgment, interest, and costs? Give the particular kinds, and value of such property, effects, &c.

Interrogatory 2d. Are you indebted to said defendant at the service hereof, or at any time up to filing of your answer in an amount sufficient to satisfy said judgment, interest, and cost? If nay, in what amount? Give a detailed account thereof.

Interrogatory 3d. Are you indebted to the said Belleville Iron-Works Company, or to any agent, or representative thereof as such, in any sum, whether due or to become due hereafter? And does the same amount to $5,000?

Order.

Let this supplemental petition be filed, and let the garnishee herein named be ordered to answer under oath and according to law, in

writing, within ten days from the service hereof, the interrogatories herein propounded to him by plaintiff.

New Orleans, 30th April, 1860.

(Signed) J. W. PRICE, *Judge.*

For citation on A. Converse, see page 57.

293 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Answer of Bank of America, garnishee.

William G. Hewes, president of the Bank of America, herein made garnishee, now comes into court, and, in obedience to the order of this hon. court, answers the interrogatories herein propounded to the Bank of America, as follows, to wit:

To the interrogatory 1st. The Bank of America has in its hands, deposited to the credit of R. Wells, syndic of the Belleville Iron-Works Company, the sum of eleven thousand eight hundred and sixty-seven dollars seven cents, ($11,867.07,) but of this amount, eleven thousand dollars has already been garnisheed in the hands of the said bank by order of the United States circuit court, eastern district of Louisiana,
294 in the case of Holdane & Co. vs. Bellville Iron-Works Company, being No. 3090, and in the suit of the same vs. the same, being No. 3049 of the docket of said court.

To interrogatory 2d. No.

To interrogatory 3d. No other than what is stated in the above answer to interrogatory first.

(Signed) WILLIAM G. HEWES,
President.

Sworn to and subscribed before me this 3d May, 1860.

(Signed) G. LUMINAIS,
D'y Clerk.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Answers of F. W. C. Cook, garnishee—Filed May 3, 1860.

To 1st interrogatory: None.

To 2d interrogatory: No; and for a fuller answer, I refer to my answers to interrogatories propounded to me by the same plaintiff in suit No. 12851 in this court.

To 3d interrogatory: No.

(Signed) F. W. C. COOK.

295 Sworn to and subscribed before me May 3, 1860.

(Signed) J. O. CHALON, *Clerk.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Bill of exception of plaintiff.—Filed May 30, 1860.

Be it remembered that, on the trial of this cause, plaintiff's attorney questioned the witness then on the stand as to whether the property of the

Belleville Iron-Works Company, which was sold by the sheriff in the proceedings entitled Belleville Iron-Works vs. Its Creditors, No. 12890 in this court, could have been sold to a better advantage and for a higher price, by selling the whole establishment, (lease and moveables,) together, or by selling the lease first, or in some other mode than in which the same were actually sold; but the question and any testimony on
296 the subject therein called for was objected to by the attorney of the defendants Wells and Person, on the ground, that the said property, having been sold by the sheriff under the order of the court, the testimony sought to be elicited was inadmissible. Which objection was sustained by the court; to which ruling plaintiff's attorney excepted.

And be it further remembered that, while the said witness was on the stand, plaintiff's attorney offered to prove by the said witness that, during the year 1858, he offered to purchase from the Belleville Iron-Works Company, a steam-engine at a fair price, and that the said company and especially the defendant Wells, refused to sell to him at all, and that the said engine was afterwards sold at about half the price offered by the witness; but the attorney of the defendants Person & Wells objected to such testimony, on the grounds that the same was not warranted by the allegations of the petition, and that the only
297 specified charge of mismanagement, neglect, &c., in the petition, was that in regard to the failure to collect the amount of the subscriptions of B. Fallon and F. W. C. Cook, as stockholders.

(Signed) J. W. PRICE, *Judge.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Defendants' bill of exceptions.—Filed May 3, 1860.

Be it known that, on the trial of this cause, F. W. C. Cook, a witness produced and sworn on the part of said plaintiff, having been examined on his voce dire, and having stated that he was a stockholder of the said Belleville Iron-Works Company, the defendants, J. J. Person and R. Wells, objected to the competency of said witness, on the ground of interest, inasmuch as it was to the interest of the stockholders of the said company that the plaintiff should succeed in his attempt to receive the amount of the present claim from the said
298 Person and Wells, but the court overruled the said objection and admitted the testimony of the witness aforesaid. Wherefore the said defendants, J. J. Person and R. Wells, reserve this their bill of exceptions; which is granted and signed by the court accordingly.

(Signed) J. W. PRICE, *Judge.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Answer of A. Converse, garnishee.—Filed May 10, 1860.

A. Converse, made garnishee in the above-entitled suit, being duly sworn, answers to the interrogatories of the said plaintiff as follows:

1st. To the first interrogatory he says: I have nothing in my possession or under my control, neither at service herein nor to the present

time belonging to the defendants, The Belleville Iron-Works Co., so far as I am advised and believe.

2d. To the second interrogatory he saith: No; not in any manner whatsoever.

299 3d. To the third interrogatory he saith: No; except to Richard Wells in his capacity as syndic of the creditors of the said Belleville Iron-Works Company. On the 10th March, 1860, the lease of the property occupied by the said company for the unexpired term thereof, ending on the 31st December, 1865, was sold at public auction by the sheriff under the order of this court, and adjudicated to me at the rate of $1,000 per annum, payable quarterly, at the periods fixed by the original lease, say on the first January, April, July, and October of each and every year. Nothing has yet been paid on account of the rent accruing under said purchase.

(Signed) A. CONVERSE.

Sworn to and subscribed before me May 10, 1860.

(Signed) J. O. CHALON, *Clerk.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Answer of Richard Wells, garnishee.—Filed May 10, 1860.

300 Richard Wells, made garnishee in the above-entitled suit, being duly sworn, answers to the interrogatories of the said plaintiff, as follows:

1st. To the first interrogatory he saith: I have nothing in my possession or subject to my control belonging to the defendant The Belleville Iron-Works Company, so far as I am advised and believe. As syndic of the creditors of the said Belleville Iron-Works Company, I received possession of the assets set forth in the schedule filed on behalf of said company in the case now pending in this court, entitled "Belleville Iron-Works Company vs. Their Creditors," No. on the docket of the said court, and to which schedule and to the tableaux filed therein respondent refers for greater detail.

2d. To the second interrogatory he answers: No; not in any amount whatever, as I am advised and believe.

3d. To the third interrogatory he answers: No; except as above stated, in my capacity as syndic, in which capacity I hold funds in cash and notes, as set forth in the tableau of distribution already re-
301 ferred to above, and which has been duly homologated by the judgment of this court. The amount so received appears on said tableau, but respondent does not now recollect the same and cannot state the amount, without referring to the tableau, with entire precision.

The amount is believed to have been about between $4,000 and $5,000.

(Signed) R. WELLS.

Sworn to and subscribed before me May 10, 1860.

(Signed) J. O. CHALON, *Clerk.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Rule and order.—Filed June 18, 1860.

On motion of Simonds & Fenner, plaintiff's attorneys, it is ordered that Richard Wells and the Bank of America and A. Converse, garnishees, severally show cause on Saturday, June 23, 1860, at 10 o'clock a. m., why judgment be not rendered against them in solido in
302 favor of plaintiff for the amount of the judgment vs. defendant herein, say $4,000, and why they be not ordered to pay said sum to the sheriff of this parish on the grounds—

1st. The amount shown by the answers of said Wells and Bank of America to be in their possession and control has been duly seized and made subject to plaintiff's judgment.

2d. That the answer of said Converse shows an indebtedness to the defendant the amount of said judgment.

3d. That the distribution or appropriation of the funds of defendant by the a/c and tableau in cause No. 12890 in this court, referred to by said Wells in his answer, is illegal and absolutely void, and, even if not so, is as to plaintiff res inter alios acta.

4th. That said Wells is not entitled, as against this plaintiff, to the commissions claimed by or allowed to him as provisional or definitive syndic.

5th. That the money in the Bank of America is still undistributed and under the control of the court.

6th. That there is no lessor's privilege upon the funds in the
303 hands of said Wells, as pretended by him.

Sheriff's return.

Received New Orleans, June 18, 1860, and on the same day served a copy of this rule and accompanying grounds on A. Converse, by leaving the same at his counting-house, corner of Carondelet and Gravier streets in the hands of A. Cammack, his partner, a free person, apparently above the age of 14 years, who was personally known to me, Converse being absent from the city. Same day served a similar copy on the Bank of America, by leaving the same at the banking-house, corner of St. Peter and Levee streets, in the hands of G. Bermudez, a clerk employed in said bank, a free person, apparently above the age of 14 years, whose name I learned by interrogating him, the president being absent from the bank at the time of service. And, on the 19th of same month and year, served a copy of this rule and grounds on E. A. Bradford, esq., attorney for R. Wells, personally. Same day served a copy of this rule and grounds on R. B. Sumner, personally.

304 Returned same day.

(Signed) ROBERT SWAIN,
D'y Sheriff.

JAMES JEFFRIES
vs.
BELLEVILLE IRONS-WORK COMPANY. } No. 12939.

Rule amended.—Filed June 18, 1860.

On motion of Simonds & Fenner, plaintiff's attorneys, ordered that R. B. Sumner and his co-lessors, through him as agent, be made party defend-

ant to this rule, this day taken on the garnishees, and show cause at the same time, and to the same effect, and on the same grounds, why judgment should be rendered as therein set forth, and that a copy of said rule be served on said Sumner.

Sheriff's return.

Received New Orleans, June 18, 1860, and on the 19th of the same month and year, served a copy of this rule on R. B. Sumner personally.

Returned same day.

(Signed) ROBERT SWAIN,
D'y Sh'ff.

305 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Exception to rule.—Filed June 23, 1860.

The defendants now appear, and for their peremptory exception to the rule herein taken, say that, according to the showing of the actor in said rule, the proceeding cannot be sustained, as it attempts to annul or ignore the proceedings of the Belleville Iron-Works Company vs. Its Creditors, and these respondents contend that if said proceedings can be annulled at all, a regular suit for that purpose must be instituted in the ordinary form of judicial proceedings. Wherefore these respondents respectfully pray that this their exception may be sustained and the rule dismissed with costs.

(Signed) C. ROSELIUS,
For Sumner and Others, Lessors, and for A. Converse.

(Signed) BENJAMIN BRADFORD & FINNEY,
For Syndic.

306 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Minute of evidence.—Filed June 23, 1860.

Plaintiff introduces in evidence the answers of garnishees to interrogatories.

The garnishees offer in evidence the whole record of suit No. 12890, entitled "Belleville Iron-Works Co. vs. Its Creditors, in this court, and all proceedings therein in support of their exception this day filed.

Plaintiff introduces in evidence the answers of Richard Wells, F. W. C. Cook, The Bank of America, and A. Converse, already copied on pages .

The garnishees introduce in evidence the whole record of suit No. 12890 in this court. Dispensed with, by agreement of counsel on file, copied on page

307 JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939.

Order sustaining exception of defendants in rule and rule dismissed.—Minutes June 23, 1860.

The rule herein taken by the plaintiff on the 18th instant, came on to-day for trial.

Simonds and Fenner, for plaintiff; Benjamin Bradford & Finney, for syndic; C. Roselius for R. B. Sumner & Co., lessors.

After hearing pleadings and the exception filed herein by defendants in rule, the court sustained the same, and ordered that the rule be dismissed with costs.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Judgment.

The rule taken by plaintiff on the 18th instant came on to-day for trial.

308 Simonds & Fenner, for plaintiff; Benjamin, Bradford and Finney, for the syndic; C. Roselius, for R. B. Sumner & Co., lessors.

After hearing pleadings and the exceptions filed herein by defendants in rule, the court sustained the same, and ordered that the rule be dismissed with costs.

Rendered June 23d, 1860.

Signed June 28, 1860.

(Signed) J. W. PRICE, *Judge.*

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 12939. Rule on garnishees & als.

Motion and order for appeal.—Filed June 28, 1860.

On motion of Simonds & Fenner, plaintiffs' attorneys, and on suggestion that plaintiff believes himself aggrieved by the judgment herein rendered on the 23d of June, 1860, upon the exception filed on behalf of the defendants in the rule taken on the 18th instant, by which 309 judgment the said rule was dismissed without a trial on the merits, it is ordered that an appeal be allowed from said judgment, returnable to the supreme court on the first Monday of November, 1860, on said plaintiffs giving bond and security, conditioned according to law, in the sum of two hundred dollars.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12930.

Bond of appeal annexed to order of appeal.

Know all men that we, James Jeffries, principal, and J. M. Seixas, surety, are held and firmly bound unto R. B. Sumner, Francois Valette, John Hughes, and Josephine Valette, his wife, Richard Wells, A. Converse, and the Bank of America, their executors, administrators, and assigns in the sum of two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly 310 by these presents, sealed with our seals and dated in the city of New Orleans on this 28th day of June, in the year of our Lord one thousand eight hundred and sixty.

Whereas, the above-bounden James Jeffries, this day filed a petition or motion of appeal from a final judgment rendered against him upon

an exception in a rule, in a suit of James Jeffries vs. Belleville Iron-Works Co. & al., in the fourth district court of New Orleans:

Now, the condition of the above obligation is such, that the above-bound James Jeffries shall prosecute his appeal and shall satisfy whatever judgment shall be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate real or personal, if he be cast in the appeal; otherwise that the said surety shall be liable in his place.

(Signed) JAMES JEFFRIES,
By SIMONDS & FENNER,
Att'ys.

(Signed) J. M. SEIXAS.

Signed, sealed, and delivered in presence of—
(Signed) L. E. SIMONDS.

311 JAMES JEFFRIES *vs.* BELLEVILLE IRON-WORKS CO. } No. 12939. Rule of plaintiff on garnishees & al.

Consent as to supplying documents.—Filed October 17, 1860.

The defendants in this rule having offered in evidence on their exception, filed June 23, 1860, the record, &c., in the case of Belleville Iron-Works Company vs. Its Creditors, No. 12890, in the fourth district court, and No. 6817 of the docket of the supreme court, and there being at the time missing from said record, the following documents, viz:

1. Document "A," being the lease from Sumner & als. to F. W. C. Cook, passed before Brenan, not. pub., on Nov'b'r 24, '54.
2. Document "C," being agreement of Sumner and others to accept Belleville Iron-Works Co. as lessees in lieu of Cook & Fallon, dated April 1, '57, before Brenan.
3. The writ of sequestration (and annexed document "A") annexed to petition of Arthur Cook.

312 Now it is agreed to dispense with and omit the said document thirdly described as not being in evidence, it being wholly irrelevant herein, and also that the defendants in rule file copies of the documents "A & C" (firstly and secondly described) among the papers in said case No. 12890, to be copied in the transcript of appeal in this rule, in case the incomplete transcript in said case No. 12890, already on file in the supreme court under the No. 6817 of that court, be not completed under the writ of certiorari issued therein. Any other defect in the transcript of appeal may be corrected at any time before the final hearing by consent, without the necessity of a certiorari.

(Signed) BENJAMIN, BONFORD & FINNEY.
" C. ROSELIUS.
" SIMONDS AND FENNER, *for Pl'ff.*

JAMES JEFFRIES *vs.* BELLEVILLE IRON-WORKS CO. } No. 12939.

Consent to use the transcript in suit No. 12890 *already filed in the*
313 *supreme court.—Filed October* 17, 1860.

It is agreed, for the purpose of the appeal herein taken on June 28, 1860, in the rule of plaintiff on the garnishees and on the lessors of the foundry, that the clerk may, in making the transcript, omit to copy:

1st. The record of proceedings in the matter of the Belleville Iron-Works Company vs. Its Creditors, No. 12890, in this court, and No. 6817, in the supreme court.

2d. The decree of the supreme court, rendered January 23, 1860, in this case in 15 Ann., p. 19, and that the transcript of the former, now on file in the supreme court, and the letter as printed in 15 Am., 19, be used as forming part of the transcript in the present appeal.

(Signed) BENJAMIN, BONFORD & FINNEY.
(") C. ROSELIUS,
(") SIMONDS & FENNER, *for Pl'ff.*

Certificate.

THE STATE OF LOUISIANA,
Fourth District Court of New Orleans:

314 I hereby certify that the above and foregoing one hundred and pages do contain a transcript of all the proceedings had as well as of all the documents filed, and the testimony adduced on the trial of the cause wherein James Jeffries is plaintiff and The Belleville Iron-Works Company is defendant, instituted in this court, and now on the records thereof, under the No. 12939.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at the city of New Orleans, on this eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fifth year of the independence of the United States of America.

[SEAL.] (Signed) GEO. LANDREAUX,
D'y Clk.

Citation of appeal.

THE STATE OF LOUISIANA,
Fourth District Court of New Orleans:

To Mr. J. J. Person, pres't Belleville Iron-Works Company,
315 greeting:

Whereas James Jeffries has this day filed in the office of the clerk of the fourth district court of New Orleans a petition of appeal from certain final judgments rendered in said court against him, which appeal is returnable in the supreme court for the State aforesaid, on the fourth Monday of June, 1859:

You are, therefore, hereby cited to appear in person or by attorney in the said court on the day last aforesaid, to answer the said appeal.

Witness the Honorable John W. Price, judge of the court aforesaid, this 10th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] (Signed) SAM'L GILMORE,
D'y Clerk.

JAMES JEFFRIES
vs.
J. J. PERSON, PRES'T, &C. } Nos. 12851 & 12939.

Sheriff's return.

Received June 2, 1859, and, on the 4th of the same month and
316 year, served a copy of this citation of appeal on J. J. Person, president, &c., personally.

Returned same day.

(Signed) ROB'T SWAIN,
D'y Sh'ff.

Supreme court of the State of Louisiana.

The court met Monday, December 9, 1861.

Present, their Honors E. T. Merrick, chief justice; A. M. Buchanan, Tho. T. Land, and Albert Duffil, associate justices.

Mr. Justice Voorhies, absent.

JAMES JEFFRIES, APP'T,
vs.
BELLEVILLE IRON-WORKS CO. & R. WELLS & als., garnishees, appel's. } 6911.

On motion of P. E. Bonford, esq., of counsel for the defendants, and on suggesting to the court that the plaintiff in this case is an alien enemy, it is ordered by the court that the C. S. receiver be made a party of record, and have notice of this case, and that the plaintiff be notified of the same.

317 A true extract from the minutes.

Clerk's office, New Orleans, Dec'r 9, 1861.

(Signed) J. McCULLOCH, *D'y Cl'k.*

Sheriff's return.

Received December 10, 1861, and on the 12th of the same month and year served a copy of the within on H. C. Miller & L. E. Simonds, personally.

Returned same day.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

RECORDS OF SUITS 12939 AND 12851, 4TH DISTRICT COURT, OFFERED IN EVIDENCE BY HOLDANE & CO. ON 5TH JULY, 1867.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

JAMES JEFFRIES, APP'T,
vs.
BELLEVILLE IRON-WORKS COMPANY, APP'EE. } Nos. 12851 & 12939.

Appeal from orders cumulating suits and the judgment sustaining def'ts exceptions.

318 W. J. Vasson, for appellant; Benjamin, Bradford & Finney, for appellee.

6346. Supreme court. Filed June 2, 1859.

(Signed) F. A. FOYGNET, *D'y Cl'k.*

STATE OF LOUISIANA,
4th District Court of New Orleans:

JAMES JEFRIES
vs.
J. J. PERSON, PRESIDENT, AND R. WELLS, secretary of the Belleville Iron-Works Co. } No. 12851.

Petition.—Filed 10th December, 1858.

To the Hon'ble John W. Price, judge of the 4th district court of New Orleans:

The petition of James Jeffries, who resides in Philadelphia, in the State of Pennsylvania, respectfully represents:

That J. J. Person, president, R. Wells, acting secretary, and the

319 stockholders of the Belleville Iron-Works Company of New Orleans, a corporate body organized and chartered by authority of the act of the legislature of this State, entitled "An act for the organization of corporations for works of public improvement and utility," are justly indebted in solido to your petitioner in the sum of three thousand two hundred and two $\frac{44}{100}$ dollars, with legal interest thereon from the 1st day of October, 1858, until paid, with the current rate of exchange on the city of New York on said sum, and three dollars costs of protest for this, to wit: Your petitioner states that he is the holder and legal owner of a certain promissory note, dated at New Orleans, 28th December, 1857, signed by the said J. J. Person, president, for the sum of three thousand two hundred and two $\frac{44}{100}$ dollars, payable nine months after date with current rate of exchange on New York, to the order of the said R. Wells, and by him, acting secretary, endorsed in blank, by which the said president, acting secretary,
320 and stockholders of the said Belleville Iron-Works Company promised and became bound to pay to the holder of said note the sum of money therein expressed, nine months after the date thereof.

Your petitioner further states that, at the maturity of said note, viz., on the first day of October, 1858, payment thereof was demanded of the said president, who refused to pay the same, whereupon it was duly protested for non-payment, and due notice thereof was given to the said acting secretary and to all persons concerned. All of which will fully appear from the act of protest and said promissory note hereto annexed for reference as part hereof.

Petitioner further states that, since the protest of said note, amicable demand of payment thereof has been made of the said president of the said company, who has neglected and refused to pay the same.

Wherefore, in consideration of the premises, petitioner prays that the said J. J. Person, pres'd't, and R. Wells, acting secretary of the
321 Belleville Iron-Works Company of New Orleans, may be cited to appear and answer this petition, and that, after due proceedings had, *that* the said J. J. Person, pres't, R. Wells, acting secretary, and stockholders of the Belleville Iron-Works Company of New Orleans, may be condemned to pay to your petitioner in solido the sum of three thousand two hundred and two $\frac{44}{100}$ dollars, with legal interest thereon from the 1st day of October, 1858, until paid, with the current rate of exchange on the city of New York, the costs of protest of said note and the costs of this suit, and for such other and further relief in the premises as he may be entitled to ask and receive. And as in duty bound will ever pray, &c.

(Signed) W'M J. VASSON,
Att'y for Pet'r.

Answer.—Filed 28th Dec'r, 1858.

Now come the defendants, and for answer deny, generally, all the allegations in the petition of said plaintiff, and pray to be hence
322 dismissed with costs; and for general relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Atty's.

Motion and order cumulating suits, 17th January, 1859.

This cause came on this day for trial—W. J. Vasson for plaintiff, Benjamin, Bradford and Finney for defendants—when, on motion of

Benjamin, Bradford & Finney, of counsel for defendants, and on suggesting to the court that said defendants have made a cession of property, which has been accepted by this honorable court, and a stay of proceedings granted, as will appear from reference to the proceedings in said case No. 12890 of the docket of this court, which stay of proceedings is still in force; it is ordered that this suit be cumulated with said proceedings; and it is further ordered that all legal rights of the plaintiff to attack said stay of proceedings, as well as the order cumulating his case with said insolvency, be, and are hereby, specially reserved.

323 *Bill of exceptions.—Filed 17th January*, 1859.

4th district court.

JAMES JEFFRIES
vs.
J. J. PERSON, PRES'T, AND R. WELLS, SEC'Y of the Belleville Iron Works Co.

Be it known that, on this 17th of January, 1859, when this cause was called for trial, the defendants' counsel objected to the trial of the same, and moved the court that this case be cumulated with the proceedings in the case of the Belleville Iron-Works Co. against Its Creditors, pending in this court.

Plaintiff's counsel objected to the granting of said motion for the reason that the said corporation had no right to make a voluntary cession of its property, to claim a stay of all judicial proceedings on the part of its creditors against it, and receive the benefit of the insolvent laws of this State. The judge of the court overruled the plaintiff's ob-
324 jection, granted the motion of defendants' counsel, and refused to try said case. Whereupon plaintiff's counsel excepts to the ruling of the court in the premises, and tenders this his bill of exceptions, and requested that the judge would sign the same, and file it as part of the proceedings in said case.

(Signed) J. W. PRICE, *Judge*.

Rule and grounds to set aside order cumulating suits.—Filed 19th January, 1859.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

WEDNESDAY, *the 19th day of January*, 1859.

Present, the Hon'ble J. W. Price, judge.

On motion of W. J. Vason, counsel for the plaintiff, it is ordered by the court that the defendants show cause on Monday next, 24th instant, at 10 o'clock a. m., why the order made by this court on Monday last in this case, directing this case to be cumulated with the proceedings in the case of the Belleville Iron-Works Company vs. Their
325 Creditors, should not be revoked and vacated, and this case be reinstated on the trial docket of this court, and tried in due course of proceedings according to the rules of this court, on the grounds—

1st. Because the order heretofore granted by this court, staying all proceedings against the Belleville Iron-Works Company is illegal, and was improvidently granted.

2d. Because the proceedings to try this case on the issue made by the pleadings filed in the case did not violate the meaning or contravene the intent of the said order staying all proceedings against the person and property of the defendant.

A true copy.

SAM'L GILMORE, *D'y Clk.*

Sheriff's return.

Received January 21, 1859, and on the same day served a copy of this rule and accompanying grounds on E. A. Bradford, of the law firm of Benjamin, Bradford & Finney, personally.

Returned same day.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

326 *Order: Rule continued.—24th January*, 1859.

The rule taken by plaintiff on 19th instant came on this day for trial—W. J. Vason for plaintiff, Benjamin, Bradford & Finney for defendants—when, after hearing argument, the same is continued till to-morrow at two o'clock.

Order of continuance of 25th January, 1859.

The rule herein continued from yesterday came on again this day, and, after argument, continued till to-morrow at 10 o'clock.

Order of continuance of 26th Jan'y, '59.

The rule herein continued from yesterday came on again, and, after hearing further argument, the court took time to advise.

Reasons for judgment on rule.—Filed 7th February, 1859.

No. 12851, 4th district court.

Plaintiff moves for a new trial on the order made cumulating
327 this suit with the insolvent proceedings of defendants, on the ground that the order of this court staying all proceedings against the property of defendants, and accepting their surrender was illegally and improvidently granted. 2d. Because the trial of this cause would not contravene the said order until the order granted in the case of the defendants vs. their creditors has been regularly vacated, annulled, and cancelled in a proper proceeding in said case, contradictorily with the creditors or syndic, it is incompetent for plaintiff to proceed any further in this case. This order cannot be set aside collaterally in this case; it can only be done directly, and in the case of defendants vs. their creditors. The second ground is not well taken. As soon as the surrender is accepted by the court, and the order granted for the stay of all proceedings, it stops all proceedings against the debtor's person and property. The debtor's rights pass to others, and they cannot be affected by proceedings to which they are strangers. (Elmes vs. Estevan,
328 1 Mar., 192.) The defendant became, by accepting the surrender, civiliter mortuus, and consequently the suit could not be carried on for want of proper parties. (David vs. Hern, 1 Mar., 206.) Even admitting that plaintiff's name does not appear on defendant's bilan, yet

I consider the order to cumulate was properly made. A creditor not put on the bilan may bring a separate suit, because he is no party to the insolvent proceedings, but as soon as he is informed by the answer that a concurso is formed, the cause must be transferred to the court where the action is pending, and be cumulated with it. (See Taylor vs. Hollander, 4 N. S., 535; Franklin Bank vs. Nolte et al., 4 N. S., 624.)

For the reasons assigned, it is ordered, adjudged, and decreed that the rule taken herein by plaintiff be discharged, and a new trial refused, with costs.

Judgment.

JAMES JEFFRIES
vs.
J. J. PERSON, PRES'T, & AL.

329 For the reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered, adjudged, and decreed that the rule taken herein by the plaintiff, on 19th January, 1859, be dismissed, with costs.

Rendered February 7, 1859.
Signed February 11, 1859.
(Signed) J. W. PRICE, *Judge.*

Order.—Sydnic made party to the suit.—24th February, 1859.

STATE OF LOUISIANA,
4th District Court of New Orleans:

THURSDAY, *the 24th day of February*, 1859.

Present, the Hon. J. W. Price, judge.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO.

On motion of W. J. Vasson, counsel for the plaintiff, and suggesting to the court that R. Wells, one of the defendants, has been elected syndic of the creditors of the Belleville Iron-Works, accepting the surrender of the property made by said corporation since this case
330 was put at issue, it is, therefore ordered that the said R. Wells, sydnic, &c., be made a party to this cause by service of a copy hereof, and that he file his answer thereto within the legal delay, and that he be served with a copy of petition.

A true copy.

SAM'L GILMORE,
D'y Clk.

Sheriff's return.

Received, February 25, 1859, and on the 28th of same month and year, I served a copy of the within rule on R. Wells, sydnic, by leaving the same at his domicil, corner of Canal and Carondelet street', in the hands of Mrs. Wells, his wife, a free white person apparently above the age of 14 years, living and residing at the said domicil, Mr. R. Wells

being absent at the time of said service; all of which facts I ascertained by interrogating her.

Returned same day.

(Signed) H. C. SWAIN,
D'y Sh'ff.

Exception.—Filed 12th March, 1859.

Now comes Richard Wells, made defendant herein, in his capa-
331 city as syndic of the creditors of the said defendants, and excepts to the further proceedings of the plaintiff herein, on the ground that the said Belleville Iron-Works Company have made a cession of their property to their creditors; that the same has been duly accepted, and a stay of proceedings granted therein, as the whole will appear from reference to the said proceedings, now pending in this honorable court, entitled Belleville Iron-Works Company vs. Their Creditors.

Wherefore this appearer prays that this his exception be maintained; that this suit be cumulated with said insolvent proceedings; and that he be hence dismissed, with costs and general relief.

BENJAMIN, BRADFORD & FINNEY,
For Def't.

Order fixing exception for trial.—29th March, 1859.

On motion of W. J. Vasson, for plaintiff, with the consent of E. A. Bradford, for defendant, it is ordered that the exceptions herein
332 filed be fixed for hearing on 4th April, 1859, at 10 o'clock.

Order.—Exception submitted 4th April, 1859.

The exception filed by the defendant on 12th March, 1859, came on this day—Vason, for plaintiff; Benjamin, Bradford and Finney, for defendant—when, after hearing argument, the court took time to advise.

Order.—Exception sustained 2d May, 1859.

For the reasons assigned in the written opinion of the court, already delivered, and on file upon the rule for a new trial taken by the plaintiff herein, it is ordered that the exception filed by R. Wells, syndic, be sustained; and that this cause be cumulated with the insolvent proceedings of the Belleville Iron-Works Company vs. Their Creditors.

Rendered May 2, 1859.

Signed May 5, 1859.

J. W. PRICE, *Judge.*

333 4th district court of New Orleans.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

Petition.—Filed 18th January, 1859.

To the Hon'ble J. W. Price, judge of the 4th district court of New Orleans:

The petition of James Jeffries, a citizen of the State of Pennsylvania, residing in the city of Philadelphia, respectfully shews:

That the Belleville Iron-Works Company, a corporate body organised and chartered by authority of the laws of the State of Louisiana, &

domiciliated in the city of New Orleans, is justly indebted to your petitioner in the sum of three thousand two hundred and sixty-two $\frac{86}{100}$ dollars, with legal interest thereon since the 31st December, 1858; the current of exchange in New York, and costs of protest for this, to wit:

Petitioner is the holder and legal owner of a promissory note
334 signed J. J. Person, the president, and countersigned by R. Wells, acting secretary of the said company, dated the 28th December, 1857, according to which the said company promised to pay, 12 months after date, to the order of R. Wells, acting secretary, thirty-two hundred and sixty-two $\frac{86}{100}$ dollars, with current of exchange on New York, which said note is endorsed in blank by the said acting secretary, and put in circulation by authority of said company.

Petitioner further states that said note, at its maturity, was presented at the office of said company, and payment thereof demanded, which was refused, whereupon the note was duly protested for non-payment, and notice of said demand and protest for non-payment given to all parties entitled to the same; all of which will fully appear from said note and protest hereto annexed.

Petitioner further states that he is advised that, on the 29th day of December last past, an ex parte order was granted by the judge
335 of this court upon the petition of the defendant, praying to be allowed to make a voluntary cession of its assets to its creditors, staying all proceedings against the person and property of the said company. Petitioner respectfully insists that said order is illegal, and was improvidently granted by the judge of this court, and should, therefore, be annulled and vacated, for this, that corporations, such as the defendants in this case, have no right, under the laws of this State, to make a voluntary surrender of their property to their creditors, and receive the benefit of the insolvent laws of this State; and that the institution of the proceedings by the said defendant against its creditors for that purpose is only calculated to harass and delay its creditors in collecting their debts.

Wherefore, in consideration of the premises, petitioner prays that the Belleville Iron-Works Company be cited, by service of a copy of this petition and citation upon J. J. Person, pres't, to answer this peti-
336 tion, and that, after due proceedings had, the order heretofore granted by the judge of this court staying all proceedings against the person and property of the defendant, on the petition of the defendant on file in this court, be annulled and vacated, and that the defendant may be condemned to pay your petitioner the sum of thirty-two hundred and sixty-two $\frac{86}{100}$ dollars, with the current of exchange on New York, viz, $16.31 *dollars*, and three dollars costs of protest, with legal interest thereon from 31st of December, 1858, and costs of this suit; and for such other and further relief in the premises as he is entitled to ask and receive.

(Signed) W'M J. VASSON,
Att'y for pl't'ff.

Order.—R Wells, syndic, made party.—24th February, 1859.

STATE OF LOUISIANA,
4th District Court of New Orleans:

WEDNESDAY, *the 24th day of Feb'y*, 1859.

Present, the Hon'ble J. W. Price, judge.

On motion of W. J. Vasson, counsel for the plaintiff, and on sug-
337 gesting to this court that R. Wells has been elected syndic of the

creditors of the defendants since the institution of this suit, it is therefore ordered by the court that R. Wells, syndic, &c., be made a party to this suit by service of a copy of the petition and citation, and that he be required to file his answer thereto within the legal delay.

A true copy:

SAM'L GILMORE, *D'y Clk.*

Received, February 25th, 1859, and, on the 2d March, 1859, served copy of this order on R. Wells, syndic herein, by leaving the same at his domicil, corner of Canal & Carondelet streets, in the hands of Mrs. R. Wells, his wife, a free person, apparently above the age of 14 years, living in the said house, whose name I learned by interrogating her, he being absent from home at the time of service.

Returned same day.

H. C. SWAIN, *D'y Sh'ff.*

Exception.—Filed 12th March, 1859.

4th district court, No. 12939.

338 Now comes Richard Wells, made party herein in his capacity as syndic of the said defendants' creditors, and excepts to the petition of the said plaintiff, that he cannot proceed in the manner and form attempted herein; that inasmuch as the said defendants have made a cession of their property to their creditors, and the same has been duly accepted and a stay of proceedings granted thereupon as will appear from reference to the suit now pending in this honorable court, entitled "Belleville Iron-Works Co. vs. Their Creditors," the plaintiff herein cannot prosecute this suit, but the same should be cumulated with the said insolvent proceedings.

Wherefore said appearer prays that this exception be maintained and that he be hence dismissed with costs and general relief.

BENJAMIN, BRADFORD & FINNEY,
For Def't.

Order for trial of exceptions.—29th March, 1859.

339 On motion of W. J. Vasson, for plaintiff, with the consent of E. A. Bradford, for defendant, it is ordered that the exception herein filed be fixed for hearing on 4th April, 1859, at ten o'clock.

Order: Exceptions submitted 4th April, 1859.

The exception filed by the defendant on 12th March, 1859, came on this day—Vasson, for plaintiff; Benjamin, Bradford and Finney, for defendant—when, after hearing argument, the court took time to advise.

Order, sustaining exception and cumulating suits.—2d May, 1859.

For the reasons assigned and on file in the case of Jeffries vs. Belleville Iron-Works Co., No. 12851, of the docket of this court; it is ordered that the exceptions herein filed by Richard Wells, syndic, be sustained, and that this cause be cumulated with the insolvent proceedings of the Belleville Iron-Works Co. vs. Their Creditors.

Rendered May 2, 1859.

340 Signed, May 6, 1859.

J. W. PRICE, *Judge.*

Petition for appeal, order, and bond.—Filed May 10, 1859.

JAMES JEFFRIES
vs.
J. J. PERSON, PRES'T, AND R. WELLS, SECRETARY and syndic of Belleville Iron-Works Co. } No. 12851.

In the 4th district court of New Orleans, ordered to be cumulated with the proceedings in the case of The Belleville Iron-Works Co. vs. Their Creditors.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO., AND R. WELLS, syndic, &c., &c. } No. 12939.

In the 4th district court of New Orleans ordered to be cumulated with the proceedings in the case of The Belleville Iron-Works Co. vs. Their Creditors, &c., &c.

To the honorable the judge of the 4th district court of New Orleans:

341 James Jeffries, the plaintiff in the two above-stated cases, respectfully states: That he is aggrieved and injured by the judgments of this court sustaining the exceptions of R. Wells, syndic, &c., and ordering the said causes to be cumulated with the proceedings in the matter of the Belleville Iron-Works Co., &c., vs. Their Creditors, pending in this court, and therefore prays to be allowed to appeal from the said judgments and orders, to the supreme court, that what of right and justice should be, may be done in the premises. And as in duty bound, &c.

W'M J. VASON,
Counsel for Pet'r.

Order.

An appeal is allowed in these cases, as prayed for and according to law, returnable to the supreme court the 4th Monday of June, 1859, the appellant giving bond in the sum of one hundred and fifty dollars, with good and solvent security, conditioned as the law directs.
May 10, 1859.

J. W. PRICE, *Judge.*

342 *Bond.*

Know all men by these presents that we, James Jeffries, of Philadelphia, and H. W. Conner, of the city of New Orleans, are held and firmly bound unto R. Wells, syndic of the creditors, &c., &c., J. J. Person, pres't, and R. Wells, secretary of the Belleville Iron-Works Co., of New Orleans, their executors, administrators, and assigns, in the sum of one hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 9th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above-bonnden James Jeffries this day filed a petition of appeal from two judgments or orders rendered against him in the

suits of James Jeffries vs. The Belleville Iron-Works, and R. Wells, syndic of the creditors of the Belleville Iron-Works Co., and James
343 Jeffries vs. J. J. Person, pres't, and R. Wells, syndic of Belleville Iron-Works Co., in the 4th district court of New Orleans, on the 2d day of May, 1859:

Now, the condition of the above obligation is such, that the above-bound James Jeffries shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said H. W. Conner, surety, shall be liable in his place.

JAMES JEFFRIES, [L. S.]
Per W. J. VASON.
H. W. CONNER. [L. S.]

Signed, sealed, and delivered in presence of—
W'M J. VASON.

Agreement relative to appeal, written at foot of the petition of appeal.

It is agreed that these two causes shall be consolidated; that an appeal may be taken by the plaintiff from the judgment and orders of this court rendered in both cases, as if rendered in one alone;
344 that one copy of the record which shall consist of plaintiff's petitions, the defendant's answer in one, the syndic's exceptions filed in both, and the judgments and orders of this court rendered in both cases; the petition and schedule of the defendant, the order of the court thereon, and the appointment of R. Wells syndic of defendant's creditors, shall be considered sufficient, either party being at liberty to use any other portion of the record.

BENJAMIN, BRADFORD & FINNEY.
W'M J. VASSON.

Petition and order thereon, in the matter of the Belleville Iron Works Company vs. Its Creditors, made part of this appeal.—Petition filed 29th Dec'r, 1858.

The petition of the Belleville Iron-Works Company, a corporation duly organized and established in the parish of Orleans, respectfully shews: That, in consequence of the losses resulting from the management of the business of the company and the depreciation in the value of their assets, the company finds that it is impossible to meet its engagements; that a large amount of liabilities is already due and
345 unpaid, and that numerous suits have already been instituted, and others are apprehended, and that your petitioners are consequently desirous to surrender their property for the equal benefit of all their creditors.

That, at a meeting of the stockholders of the company, duly convened on the 15th December inst., (1858,) it was resolved unanimously that no other course remained for the company but to close its affairs, and to provide, as far as possible, for an equitable and legal distribution of its assets among its creditors, and that accordingly a statement of the assets and liabilities of the company be prepared and placed in the hands of the attorneys of the company, with instructions to go into court with the company's business; as will appear from the duly certified copy of the said resolutions hereto annexed and made part of this petition.

That your petitioners, accordingly, present herewith a statement of their affairs, as well as of all the property of the company, and
346 respectfully pray that they be allowed to call a meeting of their creditors at such time and place as this honorable court may direct, in order to lay before them the statement of the affairs of the company, and to surrender to them their estate; that an attorney be appointed to represent the absent creditors of the company, and that in the meantime all proceedings against the person and property of petitioners be stayed, and for all further aid and relief needful and proper in the premises.

BENJAMIN, BRADFORD & FINNEY, *Atty's.*

Order.

The cession of the property of petitioner is hereby accepted by the court for the benefit of its creditors, and it is ordered that a meeting of said creditors be convened and held before Walter H. Peters, esq., notary public in this city, on Monday, the 7th day of February, 1859, at ten o'clock a. m., to deliberate on the affairs of the said Belleville Iron-Works Co., and to appoint a syndic. In the meantime let all judicial proceedings against the property of said company be stayed, and let L. M. Day, esq., be appointed attorney to represent the absent creditors.

347 December 29, 1858.

J. W. PRICE, *Judge.*

Resolutions referred to in the foregoing petition and made part thereof.

NEW ORLEANS, *15th December*, 1858.

At a meeting of the stockholders of the Belleville Iron-Works Company held this day, present—

Mr. J. J. Person, presiding and representing	$10,000	of stock
Mr. Shepherd Brown, representing	16,000	" "
Mr. Cornelius Fellows "	10,000	" "
Mr. R. B. Sumner, for self and owners of foundry building	20,000	" "
Mr. Geo. Connelly	5,000	" "
Mr. L. D. C. Wood, for self & Wood & Low	5,000	" "
Mr. John Thornhill	6,500	" "
Mr. Livandais, for Byrne, Vance & Co	3,000	" "
Mr. Miles	2,500	" "
Mr. John T. Hanneman, for self and Mr. Lorenzen	7,000	" "
& B. Fallon, acting as secretary	25,000	" "
Represented	$110,000	

The following resolutions were unanimously agreed to and passed:

Resolved, That no other course remains for this company
348 except to close its affairs, and to provide, as far as possible, for an equitable and legal distribution of its assets among its creditors.

Resolved, That in order to carry the above resolution into effect, that a statement of the assets and liabilities of the company be placed in the hands of Messrs. Benjamin, Bradford and Finney, the attorneys of the company, with instructions to go into court with the company's business, and authority to take such other measures as they may deem judicious to effect a just and legal distribution of the assets of the company among

its creditors; and by this resolution full authority is hereby given to Messrs. Benjamin, Bradford and Finney to take such proceedings in the liquidation of the affairs of the company as may, in their opinion, be just and equitable and according to law.

Resolved, That our said attorn*ies* be authorized to receive any sums that may be payable to this company pending such legal proceedings as they may institute for the liquidation of the affairs of the com-
349 pany, and that they should look for their compensation and deduct their fees from the proceeds of the same.

Resolved, That the committee heretofore extant, composed of Messrs. Wood, Sumner, and Haneman are requested to call on the above-named attorneys and place our affairs in said attorneys' hands according to the above provisions; said committee being then relieved from any further attention.

Certified, a true copy according to the minute-book of said company.

B. FALLON, *Secretary.*

Schedule filed with petition.—Statement, debts of Belleville Iron-Works Co.

BILLS PAYABLE.

To A. Whitney & Sons, Philadelphia	22,498	38
" J. Jeffries & Son "	9,788	59
" C. B. Campbell & Co "	4,545	22
" Holdane & Co., New York	4,288	43
" Tugnot, Dalley & Co., "	2,303	80
" New England Car Co., "	1,325	53
" Koppisch & Cook	1,267	72
" Oathout & Bro	3,019	30
" Bridges Bro's	2,323	45
" Ed. Knox	540	80
" Phelps, Dodge & Co	847	96
350 " Slipper & Goodley, New York	1,129	92
" Snow, Brooks & Co., " "	300	69
" Beale, Melick & Decord, " "	564	36
" Tho's Tillotson & Co., " "	450	70
" Smith, Hedgeman & Co., " "	690	58
" Coddington & Co., " "	1,231	20
" R. B. Sumner, New Orleans	16,200	00
" F. F. Folger & Co., " "	15,902	73
" John Hughes, " "	8,700	00
" Wood & Low, " "	11,562	33
" Thornhill & Co., " "	4,811	12
" M. Carnen & Co., " "	688	50
" Magee & Kneas, " "	315	19
" Arthur Cook, N. York	3,382	72
Notes issued to E. W. Sewell, for rent of office, Commercial Place	1,800	00
Total bills payable		119,679 22

OPEN ACCOUNTS.

Due to Arthur Cook, N. York	378	93
" " Koppish & Cook, "	8	40
" " Shepherd Brown, N. Orleans	2,726	07

"	" J. J. Person, "	2,726 07	
"	" C. Fellowes & Co., "	2,726 07	
"	" J. F. Hanneman, "	2,726 07	
"	" R. B. Sumner, "	2,726 07	
"	" F. F. Folger & Co., "	260 53	
"	" Magee & Kneas "	107 22	
"	" A. Kearney & Co., "	67 30	
"	" C. Byrne "	4 20	
	" " J. E. Caldwell, "	154 25	
351	" " Carson & Armstrong	127 30	
	" " 2d district, Ferry	19 50	
"	" J. E. Campbell, Philadelphia	108 52	
			14,866 50
			$134,545 72

RECAPITULATION.

Total bills payable	119,679 22	
" open accounts	14,866 50	
		$134,545 72
Rent-notes unpaid to Dec'r 31, 1857	4,700 00	
" account from Jan'y 1, 1858, $7,500 per annum on lease expiring Dec'r 31, 1865—8 years	60,000 00	
	$64,700 00	

Statement of claims pending against the company.

C. W. Hotchkiss, judgment now pending on appeal, with interest and costs	662 00
Tobias Gibson, suit for damages now pending in 5th district court	20,000 00
G. & H. Delacroix, in reconvention, pending in 4th district court	3,429 00
John Christie, claims for wages in suit	450 00
	$24,541 00

The loss of the company arise from unsuccessful prosecution of its business and the depreciation of its property.

352 *Statement of assets of Belleville Iron-Works Company.*

Inventory of coal, iron, steel, brass, machinery, flasks, patterns, manufactured stock, as per statement annexed		$153,841 47
Accounts, &c., viz:		
F. W. C. Cook	47 83	
Fred. Cook	27 85	

F. L. Cook	269 39	
In suit, Paxton, attorney, G. M. Longagre	219 37	
Canal St. Ferry	3 42	
Iron-Tie J., a'c A. B. Reading	4,334 29	
Southern Pacific Railroad	1,000 00	
Jno. Christie	100 00	
Jno. Williams	1,859 03	
C. Bussy	43 60	
Landry & Timlier	41 16	
W. Minge	124 10	
Jeffries & Sons	2 40	
Opelousas Railroad Co	874 00	
S. Trepaginer, jr	11 35	
A. B. Moras	337 65	
J. W. Stanton & Co	45 21	
T. J. Casey	68 43	
R. D. Urquhart	5 75	
In suit, Paxton, attorney, Marlin & Dromel	84 24	
C. Mire	34 54	
LaBranch & Co	135 50	
John Mewor	462 14	
353 In suit, B. B. & F., att'ys, G. & H. Delacroix	2,988 22	
Kate Dale	3 00	
White & Trufant	284 84	
Paxton, att'y, in suit, St'r Kate Dale	1,165 17	
Fellows & Co., ac. Dr. Huff	1,077 42	
B. B. & F., att'ys, in suit, T. Gibson	1,248 56	
Total open accounts		16,898 46
Bills receivable, F. W. C. Cook, note on hand for ac. of his subscription to capital stock	2,000 00	
Poindexter & Grayson for	160 00	
		20,160 00
		190,889 93

And lease of the Belleville Iron-Works expiring Dec. 31, 1865, now rented by the company at $7,500 per year—7 years unexpired—from Jan'y 1, 1859, and the sum of four hundred and seventy-eight $\frac{81}{100}$ dollars in cash deposited as security for the appeal bond given by the company in the case of Hotchkiss vs. The Comp'y.

I, J. J. Person, president of the Belleville Iron-Works Co., do solemnly swear that the annexed schedule contains a correct and faithful statement of all the property possessed by the said company, either
354 in moveables or immoveables, or in other rights or claims. And I do further solemnly swear that the said schedule contains a correct and faithful statement of the active and passive debts of the said company and of the losses experienced in their affairs, and that, neither directly nor indirectly, have they diverted any of their property to the injury of their creditors. So help me God.

J. J. PERSON, *Pres't.*

Sworn to and subscribed before me this day, December 27, 1858.

ARTHUR SAUCIER, *J. P.*

Recapitulation of the inventory made of the Belleville Iron-Works, and closed 12th October, 1857.

Coal		4,549 00
Steel		459 01
Bar-iron		5,037 80
Boiler do.		3,642 64
Sheet do		1,949 44
Pig do		9,584 76
Shafts do		1,891 28
Copper & brass		3,679 45
	Scrap-iron	6,421 95
355	Sundry materials	12,790 02
	Stock, fixtures mostly per first inventory	43,354 13
Flasks (per first inventory of purchase)		14,177 07
Tools		4,945 00
Improvements		7,203 92
Manuf'd work—stock		17,376 95
Do.	contracts	58,275 12
Do.	jobs	968 70
Patterns (per 1st inventory of purchase)		26,778 05
		$223,085 29

(Signed) EDW'D GRINNELL.
" JOHN C. MARSH.
" E. W. HOOKE.

Amount of above inventory	223,085 29
Less contract and job work since turned out and carried to personal ac. in ledger	59,243 82
	163,841 47
Less am't materials used since (by estimate)	10,000 00
	$153,841 47

The balance-sheet forming part of the schedule is at foot hereof.

Order appointing R. Wells syndic.

THE BELLEVILLE IRON-WORKS CO.
vs.
ITS CREDITORS.

356 Let Richard Wells be appointed provisional syndic of the creditors of the insolvents upon his giving bond with good and solvent security in the sum of ten thousand dollars, conditioned as the law directs.

New Orleans, January 4, 1859.

J. W. PRICE, *Judge.*

December 22, 1858.	Ledger fo.	Trace of ledger.		Profit & loss.		Capital stock.		Balance.	
		Dr.	*Cr.*	*Dr.*	*Cr.*	*Dr.*	*Cr.*	*Dr.*	*Cr.*
Capital stock	1	26,778 05	170,000 00				170,000 00		
Patterns, &c	8	62,300 20						$26,778 05	
Stock fixtures	4	6,901 12						62,300 20	
Improvements	84	40,006 35						6,901 12	
Sundry materials	37	17,376 95						40,006 35	
Manuf'd work	226	478 81						17,376 95	
Cash	72	20,160 00						478 81	
Bills receivable	58							20,160 00	
Bills payable	70		124,379 22						124,379 22
Personal balances due us		12,564 17						12,564 17	
" " due from us			14,866 51						14,866 51
Iron-Tie Co	226	4,334 29						4,334 29	
Profit & loss	82	118,345 79		118,345 79					
		$309,245 73	309,245 73						
By cap. stock for nett loss					$118,345 79	$118,345 79			
				118,345 79	118,345 79				
To bal'ce for net capital						51,654 21			
						170,000 00	170,000 00		
Total assets & liabilities								190,899 94	139,245 73
Net capital as per cap. stock									51,654 21
								190,899 94	190,899 94

358 4th district court or New Orleans.

JAMES JEFFRIES,
vs.
J. J. PERSON, PRES'T, & R. WELLS, SEC'T'Y &C. } No. 12851

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO. } No. 12939.

I hereby certify that the foregoing 28 pages contain true and correct copies of the proceedings and documents used on the trial of the exceptions in said two causes and agreed to be taken up to the supreme court pursuant to agreement of counsel on file herein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court in the city of New Orleans this 26th day of May, in the year of our Lord one thousand eight hundred and fifty-nine, and in the 83d year of the independence of the United States.

W'M C. AULD, *Clerk.*
By M. H. FLANAGAN, *D'y Cl'k.*

359 *Decree of supreme court in suit No.* 12939.—*Filed February* 3, 1860. *Offered in evidence by Holdane & Co July* 5, 1867.

Supreme court of the State of Louisiana.

The court met Monday, January 23, 1860. Present, their honors E. T. Merrick, chief justice; A. M. Buchanan, Thomas T. Land, and Albert Voorhies, associate justices.

JAMES JEFFRIES, APP'T,
vs.
BELLEVILLE IRON-WORKS CO., APP'EE. } No. 6346.

Appeal from fourth district court of New Orleans.

In this cause Mr. Justice Buchanan this day delivered the opinion of the court, in writing, in the words and figures following:

The plaintiff brought suit in the fourth district court of New
360 Orleans on the 10th December, 1858, against the defendants, a private corporation, established under the act of 1855, p. 182, upon a promissory note of the defendants for $3,202.44, signed by their president, payable to the order of, and endorsed in blank by, their secretary, of which note plaintiff alleged himself to be the owner and holder.

On the 29th of December, 1858, defendants made a voluntary surrender of their property in the fourth district court of New Orleans, the judge of which court accepted the cession, and ordered a stay of proceedings and a meeting of their creditors to take place on the 7th February, 1859. In the schedule filed with their petition is found the name of "J. Jeffries & Son," a firm of which plaintiff is admitted in argument to be a partner, inscribed as creditors of the Belleville Iron-Works Company by bills payable for the sum of $9,788.59.

On the 18th January, 1859, the plaintiff instituted another suit in the same court against the defendants as holder and owner of another
361 promissory note similarly made and endorsed for $3,262.86, due December 31, 1856.

In his petition in this latter suit plaintiff charges "that he is advised that, on the 29th day of December last past, an ex-parte order was granted by the judge of this court, upon the petition of the defendant, praying to be allowed to make a voluntary cession of its assets to its creditors, staying all proceedings against the property of the said company. Petitioner respectfully insists that said order is illegal, and was improvidently granted by the judge of this court, and should therefore be annulled and vacated for this, that corporations such as the defendant in this case have no right under the laws of this State to make a voluntary surrender of their property to their creditors, and receive the benefit of the insolvent laws of this state." And he prayed that the order in question might be annulled, and for judgment upon the note. On motion of plaintiff's attorney, R. Wells, the syndic, elected at the
362 meeting of creditors of defendants, was made a party to both of these suits. He, pleading the order of the 29th December, 1858, as an exception, prayed that these suits be cumulated with the insolvent proceedings of defendants.

After hearing, the exception was sustained, the suits ordered to be cumulated, and from this judgment plaintiff appeals. By consent of parties the two cases have been brought up, and are to be decided in one appeal.

The question presented by this appeal is, whether a corporation, created under the act for the organization of corporations for works of public improvement and utility, approved March 14, 1865, can avail itself of the provisions of the act relative to the voluntary surrender of property, approved March 15, 1855.

On the part of the appellees it is objected that this question has been collaterally raised, and cannot be examined in this form; that it must be the subject of a proceeding in the suit of the Belleville Iron-Works Co. vs. Its Creditors.

This objection appears unfounded. The issue of the illegality
363 of the order accepting the surrender of property is made by direct action in the same court which rendered that order, and contradictorily with the corporation by, citation served upon the president, as well as with the creditors of the corporation, by notice to the syndic elected by them. Of the two precedents cited in argument, in one (Gottschalk vs. Her Creditors, 7 L. R., p. 436) an appeal was taken by two creditors from the order accepting the surrender; and in the other (Foucher vs. Creditors, 7 La. Rep., p. 425) a motion was made to set aside that order in a distinct suit, instituted by sundry creditors for a sequestration of the absconding debtor's property. If there be any difference, the present would seem to be rather more formal than either of those cases.

Proceeding, then, to the consideration of the question above stated, we understand the counsel of appellees to maintain the right of a corporation to the benefit of the voluntary surrender of property act
364 on the ground that, by the first section of that act, it is said, "Any person may make a cession of his property to his creditors," and the counsel argues that corporations constitute a class of persons in the Civil Code of Louisiana. He directs our attention particularly to article 431 of the code, in which corporations are designated intellectual persons. We are of opinion that the term persons in the first section of this act of the legislature refers to the natural persons alone, and that it was not the intention of the law-giver to include under the denomination the artificial or legal person which is the subject of the tenth title of the first book of the Civil Code. The act relative to the voluntary surrender of property and mode of proceeding, approved 15th of March,

1855, is copied substantially, and in many of its sections word for word, from the act relative to the voluntary surrender of property and to the mode of proceeding, as well as for the direction and for the disposal of debtors' estates and for other purposes," approved February
365 20, 1817, as amended by the act of the 29th March, 1826, by that of March 13, 1837, and by that of the 28th March, 1840. (Bullard & Curry's Digest, pages 487, 495, 498, & 474.)

Indeed there is scarcely anything in the act of 1855 which is not to be found in one or the other of the above-mentioned acts, except some provisions relative to syndics and their commissions. Yet in the case of the Commissioners of the Exchange Bank vs. Mudge, 6 Rob., 398, this court said that no law existed previously to the year 1842 which defined the insolvency of a corporation, or provided for either its voluntary or forced liquidation. It is manifest from this language that our predecessors did not consider that a corporation was entitled to make a cession of property under the insolvent laws then in force, and which, as we have seen, were substantially the same with that under which the defendants made the application to the fourth district court, and obtained its order staying proceedings against them. The first
366 section of the act of 1817 uses this word "individual." This word in the first section of the act of 1855 has been changed into "person." But we have no reason to believe that by this change the legislature intended to enlarge the objects of the law to corporations. Nothing of that kind is intimated in Mr. Philips' report to the legislature upon the revision of the statutes of the State.

The first section of the act of 1817 reads in entire, as follows: "Every individual who shall not yet have been imprisoned for debt, but who shall find himself unable to meet his engagements, may avoid imprisonment and all further proceedings against his person for said debts, by surrendering all his estate to his creditors, provided the said surrender be made bona fide, and without fraud, and agreeably to the formalities prescribed by this act.

The corresponding section in the act of 1855, reads, "Any person may make a cession of his property to his creditors, provided the sur-
367 render be made bona fide, without fraud, and agreeably to the formalities prescribed hereafter."

This change of phraseology seems to have been rendered necessary by the abolition in the year 1840, writ of capias ad satisfaciendum, which, at the time of the passage of the earlier statute, was a mode of executing all money judgments after the return of the fi. fa. "no property found."

To have preserved the identical words of the act of 1817 in the revised statute of 1855, would thus have been clearly inconsistent with the existing state of our legislation.

The omission of the portion of the section of the original act became consequently necessary, and in what remained the substitution of the word person for that of individual, if not the result of accident, had evidently no other or further design than a fancied euphony or conciseness. For the formalities required by the same section to be observed, and which are detailed in subsequent sections of the re-
368 vised as well as the original statute, such as the taking and signing of an oath, are evidently such as could only be performed by natural persons.

Again, if we look into the act under which the defendants were organized as a corporation, (Session acts of 1855, page 182,) we find in its sixth section a peculiar kind of evidence required for the ascertain-

ment of the fact of insolvency of corporations organized under that act; and also a peculiar form of liquidation prescribed in case of such insolvency.

The section declares "That they shall forfeit their charter for insolvency, evidenced by a return of 'no property found' on execution, and in such case it shall be the duty of the district judge, at the instance of any creditor, to decree such forfeiture, and to appoint a commissioner for effecting a liquidation, whose duty it shall be to convert all the assets of the company, including any unpaid balances due by stockholders on their shares, into cash; and to distribute the same
369 under the direction of the court amongst the parties entitled thereto, in the same manner, as near as may be, as is done in cases of insolvency of individuals."

It may be observed en passant that the concluding words of this section seem to negative the idea of the act for the voluntary surrender of property being applicable to corporations, and being the language of a statute passed by the same legislature, and almost on the same day, with the act which we examined in the first part of this opinion, has very much the appearance of a cotemporaneous legislative interpretation of that act confirmatory of the views we have expressed.

Be that as it may, the section is the only one in the act which treats of the insolvency of corporations. It is highly important in this case in two aspects: 1st, as a rule of evidence; 2d, as a rule of pro-
370 ceedure. Upon the first of these points we feel bound to say, that the insolvency of the Belleville Iron-Works Co. has not been legally shown. Upon the second, that when the insolvency shall be evidenced according to law, the legal form of proceeding for the liquidation of their affairs in court, is different from that which has been adopted in this case.

In the form of proceedure prescribed by the statute, the corporation would be defendant, instead of being, as we find them in the form of proceeding which they have pursued, the plaintiffs.

It is therefore ordered, adjudged, and decreed that the judgment of the district court be reversed; that the exception filed by Richard Wells, in the capacity of syndic of the creditors of the defendant, be overruled, and that these two causes, consolidated for the purposes of this appeal, be remanded to the court below to be proceeded in according to law; and that the appellees pay the costs of appeal.

CLERK'S OFFICE,
New Orleans, February 3, 1860.

A true copy.
[SEAL.] (Signed) F. A. FOYGNET, *Dy Clk.*

Pages 685, *&c.*, 18*th La. Annual Reports, offered in evidence by defendants on* 5*th July*, 1867.

(To be found transcribed at page 580.)

371 *Answer of Bank of America.—Filed February* 2, 1860, *in suit No.* 3049, *offered in evidence by Holdane & Co., July* 5, 1867.

(To be found transcribed at page 89.)

Answer of R. Wells, filed 8*th February*, 1860, *in suit No.* 3049.—*Offered in evidence by Holdane & Co., July* 5, 1867.

(To be found transcribed at page 92.)

Lease "O," offered by Sumner, Hughes & Valette, in evidence, July 5, 1867.

(To be found transcribed at page 14.)

Transfer "Q," offered by Sumner, Hughes & Valette, in evidence, July 5, 1867.

(To be found transcribed at page 28.)

RECORD OF SUIT NO. 12890, IN THE FOURTH DISTRICT COURT, OFFERED IN EVIDENCE JULY 5, 1867, BY SUMNER, HUGHES & VALETTE.

No. 6817. Supreme court. Filed May 29, 1860.
(Signed) F. A. FOYNET, *D'y C'lk.*

372 STATE OF LOUISIANA,
Fourth District Court of New Orleans:

THE BELLEVILLE IRON-WORKS CO. *vs.* ITS CREDITORS. } No. 12890.

Petition.—Filed December 29, 1858.

To the honorable the judge of the fourth district court of New Orleans:

The petition of The Belleville Iron-Works Company, a corporation duly organized and established in the parish of Orleans, respectfully shows: That, in consequence of the losses resulting from the unsuccessful management of the business of the company, and the depreciation on the value of their assets, the company finds that it is impossible to meet its engagements; that a large amount of liabilities is already due and unpaid, and that numerous suits have already been instituted, and others are apprehended, and that your petitioners are conse-
373 quently desirous to surrender their property for the equal benefit of all their creditors; that, at a meeting of the stockholders of the company, duly convened on the 15th December, inst., (1858,) it was resolved unanimously that no other course remained for the company but to close its affairs, and to provide, as far as possible, for an equitable and legal distribution of its assets among its creditors, and that, accordingly, a statement of the assets and liabilities of the company be prepared and placed in the hands of the attorn*ies* of the company, with instructions to go into court with the company's business, as will appear from the duly-certified copy of the said resolutions hereto annexed, and made part of this petition; that your petitioners accordingly present herewith a statement of the affairs, as well as of all the property of the company, and respectfully pray that they be allowed to call a meeting of their creditors, at such time and place as this
374 honorable court may direct, in order to lay before them the statement of the affairs of the company, and to surrender to them their estate; that an attorney be appointed to represent the absent creditors of the company, and that, in the meantime, all proceedings against the person and property of petitioners be stayed, and for all further aid and relief needful and proper in the premises.

(Signed) BENJAMIN, BRADFORD & FINNEY, *Att'ys.*

THE BELLEVILLE IRON-WORKS CO.
vs.
ITS CREDITORS.
No. 12890.

Document annexed to petition.

NEW ORLEANS, *Dec.* 15, 1858.

At a meeting of the stockholders of the Belleville Iron-Works Company, held this day—present, Mr. J. J. Person, presiding, and representing ..... $10,000 of stock.

Mr. Shepherd Brown, representing	16,000	"	"
Mr. Cornelius Fellows, representing	10,000	"	"
375 Mr. R. B. Sumner, for self & owner of foundry building	20,000	"	"
Mr. Geo. Connelly	5,000	"	"
" L. D. C. Wood, for self & Wood & Low	5,000	"	"
" Jno. Thornhill	6,500	"	"
" Livandais, for Byrne, Vance & Co	3,000	"	"
" Miles	2,500	"	"
" Jno. T. Hanneman, for self & Mr. Lorenzen	7,000	"	"
& B. Fallon, acting as secretary	25,000	"	"
Represented	110,000	"	"

the following resolutions were unanimously agreed to and passed:

Resolved, That no other course remains for this company except to close its affairs and to provide, as far as possible, for an equitable and legal distribution of its assets among its creditors.

Resolved, In order to carry the above resolution into effect, that a statement of the assets and liabilities of the company be placed in the hands of Messrs. Benjamin, Bradford & Finney, the attorn*ies* of the company, with instructions to go into court with the company's business, and authority to take such other measures as they may
376 deem judicious to effect a just and legal distribution of the assets of the company among its creditors; and by this resolution full authority is hereby given to Messrs. Benjamin, Bradford and Finney, to take such proceedings in the liquidation of the affairs of the company as may, in their opinion, be just and equitable, and according to law.

Resolved, That our said attorn*ies* be authorized to receive any sums that may be payable to their company, pending such legal proceedings, as they may institute for the liquidation of the affairs of the company, and that they should look for their compensation and deduct their fees from the proceeds of the same.

Resolved, That the committee heretofore extant, composed of Messrs. Wood, Sumner, and Hanneman, are requested to call on the above-named attorn*ies* and place our affairs in said attorn*ies*' hands, according to the above provisions, said committee being then relieved from any further attention.

377 Certified, a true copy according to the minute-book of said company.

(Signed) B. FALLON,
Secretary.

THE BELLEVILLE IRON-WORKS CO. *vs.* ITS CREDITORS. } No. 12890.

Schedule.—Filed Dec'r 29, 1858.—Statement, debts, Belleville Iron-Works Co.

BILLS PAYABLE.

To A. Whitney & Sons, Phil'a		$22,498 38	
J. Jeffries & Sons	"	9,788 59	
C. B. Campbell & Co.	"	4,545 22	
Holdane & Co.,	N. York	4,288 43	
Tugnot, Dally & Co.,	"	2,303 80	
New England Car Co.,	"	1,325 53	
Koppisch & Cook,	"	1,267 72	
Oathout & Bro.,	"	3,019 30	
Bridges Bros..	"	2,323 45	
Ed. Knox,	"	540 80	
Phelps, Dodge & Co.,	"	847 96	
Slipper & Goadley,	"	1,129 92	
Snow, Brooks & Co.,	"	300 69	
Beale, Melick & Decord,	"	564 36	
Tho's Tilletson & Co.,	"	450 70	
Smith, Hegeman & Co.,	"	690 58	
378 Coddington & Co.	"	1,231 20	
R. B. Sumner, N. Orleans,		16,200 00	
F. F. Folger & Co.,	"	15,702 73	
John Hughes,	"	8,100 00	
Wood & Low,	"	11,562 33	
Thornhill & Co.,	"	4,811 12	
M. Carven & Co.,	"	688 50	
Magee & Kneas,	"	315 19	
Arthur Cook, N. York,		3,382 72	
Notes issued to E. W. Sewell, for rent of office, Commercial Place		1,800 00	
Total bills payable			$119,679 22

OPEN ACCOUNTS.

Due to Arthur Cook, N. York		378 93	
" Koppisch & Cook,	"	8 40	
Shepherd Brown, N. Orleans,		2,726 07	
J. J. Person,	"	2,727 07	
C. Fellowes & Co.,	"	2,726 07	
J. F. Haneman,	"	2,726 07	
R. B. Sumner,	"	2,726 07	
F. F. Folger & Co.,	"	260 53	
Magee H. Kneass,	"	107 22	
A. Kearney & Co.,	"	67 30	
C. Byrn,	"	4 20	
J. E. Caldwell,	"	154 25	
Corson & Armstrong,	"	127 30	
2d District Ferry,	"	19 50	
G. E. Campbell, Phila.		108 52	
			14,866 50
			$134,545 72

379 RECAPITULATION.

Total bills payable	119,679 22	
" open accounts	14,866 50	
		134,545 72
Rent-note unpaid to Dec'r 31, 1857	4,700 00	
" account from Jan'y 1, 1858, $7,500 per annum, on lease, expiring Dec. 31, 1865, 8 years	60,000 00	
	64,700 00	

Statement of claims pending against the Co.

C. W. Hotchkiss, judgment now pending on appeal, interest, & costs	662 00	
Tobias Gibson, suit for damages now pending in 5th district court	20,000 00	
G. & H. Delacroix, in reconvention pending in 4th dis. c't	3,429 00	
John Christie, claim for wages in suit	450 00	
		$24,541

The losses of the company arise from unsuccessful prosecution of its business and the depreciation of its property.

380 *Statement of assets of the Belleville Iron-Works Co.*

Inventory of coal, iron, steel, brass, machinery, flasks, patterns, manufactured stock, as per statement annexed		153,841 47
Accounts, &c., &c., viz:		
F. W. C. Cook	47 83	
Fred. Cook	27 85	
F. L. Cook	269 39	
In suit, Paxton, att'y, J. M. Longagre	219 37	
Canal st. Ferry	3 42	
Iron *Fe* & ac., A. B. Reading	4,334 29	
Southern Pacific Railroad	1,000 00	
Jno. Christie	100 00	
Jno. Williams	1,859 03	
C. Bussy	43 60	
Landry & Fusilier	41 16	
W. Menge	124 10	
Jeffries & Sons	2 40	
Opelousas Railroad Co	874 00	
S. Trepagmer, jr	11 35	
A. B. Moras	337 65	
J. W. Stanton & Co	45 21	
T. J. Casey	68 43	
R. D. Urquhart	5 75	
In suit, Paxton, att'y, Marlin & Dromel	84 24	
C. Mire	34 54	

La Branch & Co		135 50	
John Mewor		462 14	
381 In suit, B. B. & F., att'ys, G. H. Delacroix		2,988 22	
Kate Dale		3 00	
White & Trufant		284 84	
Paxton, attorney, in suit, st'r Kate Dale		1,165 17	
B. B. & F., att'ys, in suit, T. Gibson		1,248 56	
Total open accounts			16,898 46
BILLS RECEIVABLE.			
F. W. C. Cook, notes on hand for ac. of his subscription to capital stock		20,000 00	
Poindexter & Grayson for		160 00	
			20,160 00
			$190,899 93

And lease of the Belleville Iron-Works expiring December 31, 1865, now rented by the company at $7,500 per year, 7 years unexpired from January 1, 1859, and the sum of four hundred and seventy-eight $\frac{81}{100}$ dollars cash, deposited as security for the appeal bond given by the company in the case of Hotchkiss versus The Company.

382 (Copy.)

Recapitulation of the inventory made of the Belleville Iron-Works closed 12th October, 1857.

Coal	4,549 00
Steel	459 01
Bar-iron	5,037 80
Boiler do	3,643 64
Sheet do	1,949 44
Pig do	9,584 76
Shafts do	1,891 28
Copper & brass	3,679 45
Scrap-iron	6,421 95
Sundry materials	12,790 02
Stock fixtures, (mostly per 1st inventory)	43,354 13
Flasks, (per 1st inventory of purchase)	14,177 07
Tools	4,945 00
Improvements	7,203 92
Manuf'd & work stock	17,376 95
Do contracts	58,275 12
Do jobs	968 70
Patterns per 1st inventory of purchase	26,778 05
	$223,085 29

(Signed) EDW'D GRINNELL.
JNO. C. MARSH.
E. W. J. COOKE.

Amount of above inventory		223,085 29
Less contract & job-work since turned out & carried to personal ac. in ledger		59,243 82
		163,841 47
Less am't materials used since (by estimate)		10,000 00
Estimate balance on hand 7th September, 1858		153,841 47

December 22, 1858.	Ledger fo.	Face of ledger.		Profit & loss.		Capital stock.		Balance.	
		Dr.	*Cr.*	*Dr.*	*Cr.*	*Dr.*	*Cr.*	*Dr.*	*Cr.*
Capital stock	1		170, 000 00				170, 000 00		
Patterns, &c	8	26, 778 05						$26, 778 05	
Stock fixtures	4	62, 300 20						62, 300 20	
Improvements	84	6, 901 12						6, 901 12	
Sundry materials	37	40, 006 35						40, 006 35	
Manuf'd work	226	17, 376 95						17, 376 95	
Cash	72	478 81						478 81	
Bills receivable	58	20, 160 00						20, 160 00	
Bills payable	70		124, 379 22						124, 379 22
Personal balances due us		12, 564 17						12, 564 17	
Personal balances due from us			14, 866 51						14, 866 51
Iron Tie Co	226	4, 334 29						4, 334 29	
Profit & loss	82	118, 345 79		118, 345 79					
		$309, 245 73	309, 245 73						
By cap. stock for net's loss					$118, 345 79	$118, 345 79			
				118, 345 79	118, 345 79				
To bal. for net capital						51, 654 21			
						170, 000 00	170, 000 00		
Total assets & liabilities								190, 899 94	139, 245 73
Net cap'l as per cap. stock									51, 654 21
								190, 899 94	190, 899 94

384 THE BELLEVILLE IRON-WORKS CO. vs. ITS CREDITORS. } No. 12890.

Affidavit.

I, J. J. Person, president of the Belleville Iron-Works Company, do solemnly swear that the annexed schedule contains a correct and faithful statement of all the property possessed by the said company either in moveables or in other rights or claims.

And I do further solemnly swear that the said schedule contains a correct and faithful statement of the active and passive debts of the said company, and of the losses experienced in their affairs, and that neither, directly nor indirectly, have they divested any of their property to the injury of their creditors. So help me God.

(Signed) J. J. PERSON,
President, &c.

Sworn to and subscribed before me this day, December 27, 1858.

(Signed) ARTHUR SAUCIER,
3d J. Peace.

385 THE BELLEVILLE IRON-WORKS CO. vs. ITS CREDITORS. } No. 12890.

Order.—Filed December 29, 1858.

The cession of the property of the petitioner is hereby accepted by the court for the benefit of its creditors, and it is ordered that a meeting of said creditors be convened and held before Walter H. Peters, esq., notary public in this city, on Monday, the 7th day of February, 1859, at 10 a. m., to deliberate on the affairs of the said Belleville Iron-Works Company, and to appoint a syndic. In the meantime let all judicial proceedings against the property of said company be stayed, and let L. M. Day, esq., be appointed attorney to represent the absent creditors.

December 29, 1858.

(Signed) J. W. PRICE, *Judge.*

THE BELLEVILLE IRON-WORKS COMPANY vs. ITS CREDITORS. } No. 12890.

386 *Notice in Daily Delta.*

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Notice is hereby given that the cession of the property of the petitioner, the Belleville Iron-Works Company, is accepted by the court for the benefit of its creditors; that a meeting of said creditors will be convened and held before Walter H. Peters, esq., notary public in the city of New Orleans, on Monday the 7th day of February, 1859, at 10 o'clock a. m., to deliberate on the affairs of said company, and to appoint a syndic; that in the meantime all judicial proceedings against

the property of said company are stayed, and that L. M. Day, esq., is appointed attorney to represent the absent creditors.

By order of the court this 29th Dec'r '58.

(Signed) SAM'L GILMORE,
Deputy Clerk.

French publication of above notice.

La compagnie dite Belleville Iron-Works Company.

387 Quatrième cour de district de la Nouvelle Orleans.

Avis est par le présent donné que le cession des propriétés du petitionaire la compagnie dite Belleville Iron-Works Company est acceptée par la cour au profit de ses créanciers; qu'une assemblée desdites créanciers sera convoqué' tenue pardevant Walter H. Peters, notaire public, dans la ville de la Nouvelle Orleans, Lundi, le septième jour de février 1859, à dix heures a. m., à l'effet de délibérer sur les affaires de ladite compagnie et de nommer un syndic; qu'en attendant, toutes poursuites judiciaires contre les biens de ladite compagnie sont suspendues, et que L. M. Day est nommé avocat pour représenter les créanciers absents.

Par ordre de la court, le 29ème Déc., 1858.

(Signéd) SAMUEL GILMORE,
Député Greffier.

Petition of provisional syndic.—Filed January 4, 1859.

To the honorable the judge of the fourth district court of New
388 Orleans, *New Orleans:*

The petition of R. V. Sumner, J. T. Haneman, L. D. C. Wood, respectfully represents that your petitioners are respectively creditors of the Belleville Iron-Works Company, which has made a surrender of its property herein, as will appear from the schedule on file herein; that, as your petitioners are informed and believe, it is important for the interest of the said creditors that a provisional syndic be appointed to take charge of the assets surrendered, which consists of moveables and outstanding claims and accounts; that no one of the creditors of the company has offered to accept the said trust, nor is any one of petitioners desirous to accept it, but Richard Wells, the former treasurer, is willing to accept the same, and on account of his knowledge of the character and condition of the assets of the company, your petitioners believe that it would be for the interest of the creditors that he, the said Richard Wells, should be appointed accordingly.

(Signed) R. B. SUMNER,
THO'S HANNEMAN, &
L. D. C. WOOD,
Creditors.

(Signed) BENJAMIN, BRADFORD & FINNEY.

389 *Order of provisional syndic.—Filed Jan'y* 4, 1859.

Let Richard Wells be appointed provisional syndic of the creditors of the insolvents, upon his giving bond, with good and solvent security, in the sum of ten thousand dollars, conditioned as the law directs.

New Orleans, Jan'y 4, 1859.

(Signed) J. W. PRICE, *Judge.*

Oath of provisional syndic.—Filed Jan'y 7, 1859.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Before me, Samuel Gilmore, deputy clerk of the fourth district court of New Orleans, personally came and appeared Richard Wells, who solemnly swears that he will well and faithfully perform all and singular the duties of provisional syndic in the above-entitled matter. So help *him* God.

(Signed) R. WELLS.

Sworn to and subscribed before me New Orleans this 7th
390 day of January, 1859.

(Signed) SAM'L GILMORE, *D'y Clk.*

Bond of provisional syndic.—Filed January 7, 1859.

Know all men by these presents that we, Richard Wells as principal and Shepherd Brown as security, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto the Hon. John W. Price, judge of the fourth district court of New Orleans, and to his successors in office, in the sum of ten thousand dollars, lawful money of the United States of America; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated at the city of New Orleans this 6th day of January, A. D. 1859.

The condition of the above obligation is such that whereas the said Richard Wells was, on the 4th January instant, appointed pro-
391 visional syndic of the creditors of the Belleville Iron-Works Company, No. 12890, on the docket of the fourth district court of New Orleans:

Now, therefore, if the said provisional syndic shall well and faithfully, and according to law, perform all and singular the duties of provisional syndic in the said entitled insolvency, then this obligation to be void; otherwise to remain in full force and effect against the said principal and security.

(Signed) R. WELLS. [L. S.]
(") STEPHEN BROWN. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) W. B. PANTIN.
(") J. N. NIVIM.

Rule to annull, &c.—Filed February 16, 1859.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

WEDNESDAY, *the 16th day of February*, 1859.

Present, the Hon. J. W. Price, judge.

On motion of V. H. Ivy, of counsel for Slipper & Goodley, of
392 New York, creditors of the above company, and on representing to the court that, on the 29th of December, 1858, an ex parte was made in the above cause, accepting the property of plaintiffs for the benefit of their creditors, and ordering a meeting of said creditors before Walter H. Peters, notary, to deliberate on the affairs of said

company and staying all judicial proceedings against said company; all of which will more particularly appear by reference to said order, endorsed on plaintiff's petition herein. It is ordered that said company be notified, through its president, on the 24th day of February, 1859, to show cause why said order should not be cancelled and annulled, and all proceedings under the same be declared void, on the ground that said company, under the laws of Louisiana, by which it was instituted a corporation, has no right to the benefit of the insolvent laws of this State and the relief prayed for.

Sheriff's return.

393 Received February 17, 1859, and, on the same day, served a copy of this rule on E. A. Bradford, esq., attorney for plaintiff herein, personally.

Returned same day.

(Signed) ROB'T SWAIN, *D'y Sheriff.*

Petition of R. Wells to be recognized as sole syndic.—Filed February 19, 1859.

To the honorable the judge of the fourth district court of New Orleans:

The petition of R. Wells, of said New Orleans, respectfully shows that, in pursuance of the order of the court herein, a meeting of the said creditors was duly held before Walter H. Peters, notary public, on the 7th and 8th instants, as will appear from the process-verbal of the proceedings of the said meeting, filed herein. That all of the credtors who attended the said meeting voted for petitioner as sole syndic; and
394 that all voted to require from petitioner security for $10,000, only except two of said creditors, who voted to dispense petitioner altogether from giving security.

That the legal delay has expired, without any opposition to the proceedings of said meeting or to the appointment of petitioner as sole syndic. Wherefore petitioner prays that he may be recognized and confirmed as sole syndic of the said creditors on giving bond, with security, in the sum of $10,000; and for all further aid and relief needful and proper in the premises.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Meeting of creditors.—Filed February 19, 1859.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

By virtue of and pursuant to an order and decree rendered by the honorable the judge of the fourth district court of this city, bear-
395 ing date the twenty-fourth day of December last passed, rendered on the petition of the Belleville Iron-Works Company, a corporation of this State, as by virtue of a resolution adopted by the stockholders thereof, setting forth that from losses resulting from unsuccessful management, depreciation in the value of their assets, and other causes, the said corporation finds itself unable to meet its obligations, and unanimously recommending that the affairs of the company be closed, to provide as far as possible for an equitable distribution among its creditors, and instructing the proper officers to petition the court to call a meeting of the creditors of said corporation to meet and consider

upon its affairs, to accept the surrender of the property and assets of said corporation; that an attorney be appointed to represent the absent creditors, &c., &c., duly certified copy of which petition and order of court remain hereto annexed.

396 Be it known that, on this seventh day of the month of February, in the year one thousand eight hundred and fifty-nine, at the hour of ten o'clock a. m., before me, Walter Hecks Peters, a notary public in and for this city and parish, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Bernard Fallon, herein acting in his capacity of secretary of the Belleville Iron-Works Company, a corporation duly organized and established in the parish of Orleans, who declared that, conformably to a resolution of the stockholders of said corporation adopted at their sitting of the 15th December last past, wherein it was admitted that said corporation was insolvent, and unable to pay its debts, and recommending that a surrender of its assets be made, &c., &c., &c.:

397 Wherefore he does, by these presents, respectfully solicit of the creditors of said Iron-Works Company to accept the surrender of its assets and property, to appoint a syndic or syndics to take charge of its affairs; and for such other and general relief as the nature of the case and the law may require.

And he signs his name, together with Pierre C. Cuvillier and Octave L. Kernion, witnesses, of lawful age, residents of this city, and me, notary.

(Original signed) B. FALLON,
Sec'y Belleville Iron-W. Co.
F. CH'S CUVELLIER.
O. L. KERNION.
WALTER H. PETERS, *N. P.*

And, at the same time and place, and in presence of the witnesses aforesaid, personally came and appeared, and assembled together in meeting, in my office, the following-named creditors of said company, who, after having had reference to the petition and order of court aforesaid, and to the schedule of the affairs of said corporation,

398 and to the prayer and declaration aforesaid, did severally declare as follows:

RICHARD B. SUMNER, of the city, who, being duly sworn according to law, declared and said that the said Belleville Iron-Works Company is justly and truly indebted to him in the sum of eighteen thousand nine hundred and twenty-six $\frac{07}{100}$ dollars, with interest, by notes and obligations held by said appearer; that he accepts the surrender made by the said insolvent company, votes for R. Wells to be sole syndic of said insolvent, and requires the said syndic to furnish bond, with security in the sum of ten thousand dollars, and that the property be sold for cash.

In faith whereof he hereto subscribed his name.

(Signed) R. B. SUMNER.

JOHN HUGHES, esq., of this city, by me duly sworn, did say that said Belleville Iron-Works Company is indebted to him in the

399 sum of eight thousand one hundred dollars, by notes, with interest, &c., &c., of the company; that he accepts the surrender made, votes for R. Wells to be the syndic, with bond in the sum of ten thousand dollars, and that the property, effects, and assets of the company be sold for cash.

(Signed) JOHN HUGHES.

Richard B. Sumner and John Hughes, of this city, being by me duly sworn, did say that he, the said Sumner, is the owner of three-fourths; that he, the said Hughes, is the owner or representative of one-fourth, held by himself and Frances Valette & Josephine Valette, of the lots or portions of ground and improvements thereon, on which said company have heretofore carried on the works, and that, as lessors, they are privileged creditors for sixty-four thousand seven hundred dollars; that, reserving to themselves and their principals all legal rights,
400 privileges, &c., they accept the surrender made, vote for R. Wells to be the syndic, with security in the sum of ten thousand dollars, and that the property be sold for cash. And they sign their names.

(Signed) JOHN HUGHES.
(") R. B. SUMNER.

GEORGE WHITNEY, esq., herein acting for and in the name of A. Whitney & Sons, of which firm he is a member, of Philadelphia, Pennsylvania, being by me duly sworn, did say that said company is indebted to his firm in the sum of twenty-two thousand four hundred and ninety-eight $\frac{38}{100}$ dollars, ($22,498.38,) and interest, by notes and obligations of said company; that he accepts the surrender made, votes for R. Wells for syndic, with security, and that the property of said company be sold for cash.

And he signs his name.

(Signed) GEO. WHITNEY.

SHEPHERD BROWN, esq., herein for and in the name of the
401 firm of Brown, Johnston & Co., of this city, of which he is a member, being duly sworn, did say that the said company is justly and truly indebted unto his said firm in the sum of $2,726.07, (twenty-seven hundred and twenty-six dollars and seven cents,) by open account; that, in the name of the said firm, he accepts the surrender made, votes for R. Wells for syndic, dispenses said syndic with furnishing security, and requires that the property of said company be sold for cash.

And he signs his name.

(Signed) SHEPHERD BROWN.

JOHN T. HANNEMAN, esq., of this city, being by me duly sworn, did say that said company is indebted to him in the sum of twenty-seven hundred and twenty-six $\frac{07}{100}$ dollars; that he accepts the surrender made, votes for R. Wells to be the syndic without security, and that the property of the company be sold for cash.

And he signs his name.

402 (Signed) JNO. T. HANNEMAN.

And now, at the hour of six o'clock p. m., I, the said notary, have adjourned these proceedings till to-morrow, the eighth day of February instant, at ten o'clock a. m.

In witness whereof I have hereto set my hand with Pierre Charles Cuvelier and Octave L. Kernion, witnesses.

(Signed) P. CH'S CUVELIER.
O. L. KERNION.
WALTER H. PETERS,
Not. Pub.

And again, to wit, on this eighth day of the month of February, in the year one thousand eight hundred and fifty-nine, pursuant to the ad-

journment hereof, made on yesterday the seventh instant, I, the said notary, opened these proceedings, and kept the same open from ten o'clock a. m. up to six o'clock p. m., and no other creditors having appeared to vote or take part herein, I have, preparatory to closing
403 the same, made the following

RECAPITULATION.

Richard B. Sumner, as ordinary creditor,			$18,926 07
" " " privileged "			
John Hughes			64,700 00
Francis Valette			
Josephine Valette,			64,700 00
John Hughes,	" ordinary "		8,100 00
A. Whitney & Sons,	" " "		22,498 00
Brown, Johnston & Co.	" " "		2,726 07
John F. Hanneman	" " "		2,726 07

And of those above recapitulated all have voted to accept the surrender made, and for R. Wells for syndic, that the property and assets be sold for cash; and all except Brown, Johnson & Co., and J. T. Hanneman have required the said syndic to give security in the sum of ten thousand dollars, the said Brown, Johnson & Co. and J. T. Hanneman having dispensed with security.

And now to these presents, came and intervened L. Madison Day, esq., attorney and counsellor at law, of this city, appointed by the court aforesaid to represent the absent creditors of said insolvent com-
404 pany, who declared that, reserving to his constituents all their legal rights and privileges to be by them in time and in due course of law enforced and exercised, he had no objection to offer to what has been done, or the homologation of the same.

And he signs his name.

(Signed) L. MADISON DAY.

Thus done and definitely closed at the hour of six o'clock p. m. on the day and date aforesaid, and signed by said witnesses, and me, the notary.

(Original signed) P. CH'S CUVELIER.
" " A. L. KERNON.
" " WALTER H. PETERS, *N. P.*

A true copy, New Orleans, Feb'y 11, 1859.

[L. S.] (Signed) WALTER H. PETERS,
Not. Pub.

Order.—Filed Feb'y 19, 1859.

Let R. Wells be, and he is, recognized and confirmed as sole syndic of the creditors of the insolvent, on his giving bonds with good and solvent security in the sum of ten thousand dollars, conditioned as the law directs.

New Orleans, February 19, 1859.

405 (Signed) J. W. PRICE, *Judge.*

Oath of syndic.—Filed February 23, 1859.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Before me, Ja's B. Murtagh, deputy clerk of the fourth district court of New Orleans, personally came and appeared R. Wells, who solemnly swears that he will well and faithfully perform all and singular the duties of syndic of the creditors of the Belleville Iron-Works Company, so help him God.

(Signed) R. WELLS.

Sworn to and subscribed before me, New Orleans, this 23d day of February, 1859.

(Signed) JA'S B. MURTAGH,
D'y Clk.

Bond of syndic.—Filed February 23, 1859.

Know all men by these presents that we, Richard Wells, as prin-
406 cipal, and Shepherd Brown, as security, at the city of New Orleans, and State of Louisiana, are held and firmly bound unto the Hon. John W. Price, judge of the fourth district court of New Orleans, and to his successors in office, in the sum of ten thousand dollars, lawful money of the United States of America; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated at the city of New Orleans, this 23d day of February, 1859.

The condition of this obligation is such that whereas the said Richard Wells was, on the 19th February, instant, recognized and confirmed sole syndic of the creditors of the Belleville Iron-Works Company, No. 12890, on the docket of the fourth district court of New Orleans: Now, therefore, if the said syndic shall well and faithfully, and according to law perform all and singular the duties of syndics in the said entitled insolvency, then this obligation to be void; or otherwise remain
407 in full force and effect, and against said principal and security.

(Signed) R. WELLS.
(") SHEPHERD BROWN.

Witness:
(Signed) JA'S B. MURTAGH,
D'y Clk.

Shepherd Brown, the security in the foregoing bond, being duly sworn, says that he is worth ten thousand dollars over and above all his debts in property situated within the parish of Orleans.

(Signed) SHEPHERD BROWN.

Sworn to and subscribed before me this 23d February, 1859.

(Signed) JA'S B. MURTAGH,
D'y Clk.

Petition to sell.—Filed February 24, 1859.

To the honorable the judge of the fourth district court of New Orleans:

The petition of Richard Wells, of said New Orleans, acting herein in his capacity as syndic of the creditors aforesaid, respectfully shows

that among the assets surrendered herein, are certain move-
408 ables situated in the premises occupied by said company, and consisting of stock, fixtures, machinery, tools, patterns, drawings, manufactured stock, materials, office furniture, &c., as shown by the schedule on file herein, and that the said creditors, at their meeting held in pursuance of the order of this court, determined that the sale of said assets should be made for cash.

Wherefore petitioner prays that a sale of the said assets be ordered for cash, at public auction, by the sheriff of this honorable court, and for all further and needful relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
For Syndic.

Order to sell.—Filed February 24, 1859.

Let the syndic herein be authorized to have sold for cash, after the legal appraisement and advertisement and according to law by the sheriff of the parish of Orleans, *for cash*, the moveable property surrendered by the insolvent to its creditors.

New Orleans, Feb'ry 24, 1859.

409 (Signed) J. W. PRICE, *Judge.*

Order: Rule discharged.—Filed February 24, 1859.

Present the Hon. J. W. Price, judge.

The rule taken by Slipper and Goodley, on 16th instant, came up this day—Ivy for plaintiffs in rule; Benjamin, Bradford & Finney for syndic—when, after hearing argument, it is ordered that the rule be discharged with costs.

Order appointing appraisers.—Saturday 5th March, 1859.

Present the Hon. J. W. Price, judge.

On motion of Benjamin, Bradford & Finney, esq's., of counsel for the syndic, ordered that John Geddes and Charles Hughes be appointed and sworn as experts or appraisers to value the property surrendered and ordered to be sold herein.

410 *Notice of appointment.*

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

To JOHN GEDDES & CH'S HUGHES:

You are hereby notified that you have been appointed, by the court, experts or appraisers to value the property about to be sold in the above-entitled case.

Clerk's office, New Orleans, this 5th day of March, 1859.

[L. S.] (Signed) SAM'L GILMORE,
D'y Clk.

Sheriff's return.

Received March 7th, 1859, and, on the same day, served a copy of this order on John Geddes and Charles Hughes, both personally.

(Signed) ROB'T SWAIN,
D'y Sheriff.

Oath of appraisers.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Before, me James B. Murtagh, deputy clerk of the fourth district court of New Orleans, personally came and appeared
411 Charles Hughes and John Geddes, who solemnly swear that they will well and faithfully perform, all and singular, the duties of experts to appraise the property surrendered by the insolvent to its creditors. So help him God.

(Signed) CH'S HUGHES.
(") JOHN GEDDES.

Sworn to and subscribed before me, New Orleans, this 5th day of March, 1859.

(Signed) JA'S B. MURTAGH, *D'y Clk.*

Order to sell.—Filed March 7, 1859.

On motion of Michel & Koontz, of counsel for Arthur Cook, one of the creditors of the insolvents, and whose suit has been transferred from the hon. 2d district court of New Orleans, to be cumulated with these proceedings, and on suggesting to the court that said Arthur Cook sequestered certain property of the insolvents upon which he claims
412 a privilege before the surrender, it is ordered that the sheriff of Orleans be required to make a separate inventory of the property sequestered aforesaid in order to preserve the privilege of said Arthur Cook, if any he has upon the proceeds thereof.

Report of appraisers.—Filed March 18, 1859.

The undersigned, appointed by the honorable the fourth district court of New Orleans, appraisers, to value the property of the Belleville Iron-Works Co., respectfully report that they have duly executed said commission, and that the following catalogue, comprising two hundred and nine lots, with the valuations respectively set opposite to each lot is, according to the best of their judgment, a true and faithful appraisement of said property.

NEW ORLEANS, M'ch 7, 1859.

(Signed) JOHN GEDDES.
(") CH'S HUGHES.

413 *Catalogue of the movable effects of the Belleville Iron-Works Co., for public sale on the premises in Algiers, on Thursday, March* 10, 1859.

Lot 1. One turning-lathe, 24 feet shear, 4 feet 6 inches swing, with double-back gearing and saddle for boring out cylinders, and overhead gearing—eighteen hundred dollars.

Lot 2. One screw-cutting lathe, 13 feet sheer, 20 inches swing, with compound slide-rest and universal-chuck and overhead gearing—five hundred & fifty dollars.

Lot 3. One planing-machine, 7 feet by 30 inches—three hundred & fifty dollars.

Lot 4. One fifteen-feet turning-lathe, 28 inches swing, with screw-cutting gearing and overhead gearing.

Lot 5. One 15-feet turning-lathe, 28 inches swing, with screw-
414 cutting gearing and saddle, and universal-chuck and overhead gearing—two hundred & fifty dollars.

6. One 15-feet turning-lathe, 28 inches swing, with screw-cutting gearing and chuck and overhead gearing—two hundred & fifty dollars.

7. One first-class doublehead-lathe, 38 inches swing, 42 shear, with compound screw-cutting gearing, saddle, and cross-feed and overhead gearing—two thousand dollars.

8. One turning-lathe, 14 feet shear, 30½ inches swing, with compound screw-cutting gearing, and universal-chuck with overhead gearing—six hundred dollars.

9. One double-geared wheel-press—one hundred & fifty dollars.

10. One upright drilling and boring mill—three hundred & fifty dollars.

11. One screw-cutting machine with taps and dies—two hundred dollars.

12. Two columns for staking on wheels—forty dollars for the lot.

415 13. One turning-lathe, 30 feet shear, 60-inch swing, and overhead gearing, & twining tools—twelve hundred dollars.

14. One upright drill—one hundred dollars.

15. One upright drill—forty dollars.

16. One boring-bar with traversing head and gearing—two hundred dollars.

17. One hand-slide rest—forty-five dollars.

18. Eleven boxes invoiced as containing the following-described new machinery: one (No. 1) vertical drill; two (No. 7) compound engine-lathes; two 2½-feet planers; one (No. 7) engine-lathe with overhead gearing; two (No. 7) engine-lathe with overhead gearing; one (No. 2) dotting-machine with overhead gearing; one 6½ feet hand-lathe; one twelve-inch scroll-chuck—two hundred and twenty-five dollars.

19. One shaping-machine with overhead gearing—two hundred & twenty-five dollars.

20. One turning-lathe, 20-inch swing and 6 feet shear, with
416 screw-cutting gearing, universal-chuck, and overhead gearing—two hundred & twenty-five dollars.

21. One chasing-lathe, 17-inch swing, with overhead gearing—one hundred & twenty dollars.

22. One chasing-lathe, 17-inch swing, with screw-cutting and overhead gearing—one hundred & eighty dollars.

23. One circular saw-mill capable of running a 48-inch-diameter blade—one hundred & seventy-five dollars.

24. Four pattern-makers' benches, $10 each—ten dollars each.

25. One bridge scale and weights—seventy-five dollars.

26. One boiler-tank—seventy-five dollars.

27. One blowing-fan with under-pullies and belting—two hundred dollars.

28. 16 setts chills for railroad wheels—at one cent per pound.

29. One six-ton crane-ladle with gearing—two hundred dollars.

30. One double-geared hand-lever punch—one hundred & fifty dollars.

31. One large patent rotary shearing-machine with shaft and pullies, (Ruggles' patent)—eight hundred dollars.

32. One new punching-machine with dies for cutting washers—one hundred dollars.

417 33. One steam-hammer—one thousand dollars.

34. One boiler-riveting machine—fifteen hundred dollars.
35. Four boiler-stakes with overhead running-gear—fifty dollars each.
36. Four rivet-heating furnaces and piping—sixty dollars each.
37. One lever-punch for sheet-iron work;
38. One lever-shears for sheet-iron work—fifty dollars each.
39. Two boiler leg-clamps with screws and handles—ninety-five dollars.
40. Lot flanging-blocks for boiler-heads & legs, &c.—three cents per pound.
41. One railroad-truck, two hand-trucks, and one boiler-truck—seventy-five dollars.
42. Five platform scales—at twenty-five dollars each.
43. Two hydraulics, pump and tank, with wrought-iron *cubs* and & *loone*-shafts—fifty-five dollars for the lot.
44. Lot of blacksmith-tools, including 7 anvils, 18 bellows, sledge & hand hammers, tongs, facers—four hundred & fifty dollars.
45. Ten vices—six dollars each.
46. A lot of finishers' tools—at thirteen cents per pound.
47. A lot of boring bars and heads—at one cent per pound.
418 48. The entire lot of flasks, loom-plates, and rings belonging to the moulding-floor—at one cent per pound.
49. A lot of coppersmiths' tools and stakes—two & a half cents per pound.
50. One second-hand oscillating-engine—fifteen dollars.
51. One second-hand oscillating-engine—fifty dollars.
52. One second-hand oscillating-engine—seventy-five dollars.
53. One second-hand saw-mill engine—one hundred & fifty dollars.
54. One cask scrap-steel—at one cent per pound.
55. Two large grindstones, 60-inch diameter—forty-five dollars each.
56. One second-hand cylinder—sixty dollars.
57. One cylinder for steam-engine, bored 14 by 48 inch—thirty-five dollars.
58. One blowing-engine, second-hand—twelve dollars.
59. One steam-engine, new, nearly finished, cylinder 10 by 18 inches—one hundred dollars.
60. One steam-engine, new, nearly completed, cylinder 12 by 24 inches—one hundred and eighty-five dollars.
61. One steam-engine, new, partly finished, cylinder 12 by 24 inches—four hundred dollars.
419 62. One doctor-engine, nearly completed, with boiler—two hundred dollars.
63. Large new sugar-mill, engine nearly completed, cylinder 12 by 48 inches—eight hundred dollars.
64. One lever-scale, with weights—ten dollars.
65. One single machine—fifty dollars.
66. One do. do. fifty dollars.
67. One do. do. sixty-five dollars.
68. One do. do. sixty-five dollars.
69. Four saw-mill dogs, with saw-mill rack-castings, head and wrought-iron facings—forty dollars.
70. Six shingle-machine frames—five dollars each.
71. One lot of castings, comprising safety, check, and blow-off valves—two & a half cents per pound.
72. Lot of force and lifting pumps castings—one & a half cents per pound.

73. Lot of finished safety & check valves—ten dollars each.
74. Lot of sliding-door ways and rollers—five cents per pound.
420 75. Lot of wrought-iron work for shingle-making machines—one & a half cents per pound.
76. Bed-plate castings, &c., for shingle-machine—one cent per pound.
77. Lot of saw-mill castings, flat & V ways, rollers, and saddles—one cent & a quarter per pound.
78. Lot of shingle-machine castings—one cent per pound.
79. One new hydraulic-cylinder—forty dollars.
80. Lot of returned railroad car-wheels, about one-third in good running condition—three-quarters of a cent per pound.
81. One new double-flue boiler, 20 f't long, 36-in. diameter—four hundred & fifty dollars.
82. One small tubular boiler, shell nearly finished, with tubes to suit—one hundred dollars.
83. One boiler-shell, 14 feet long, and a lot of boiler and flue rings—five cents per pound.
84. Lot of cast-iron boiler-heads—three cents per pound.
85. Lot of hog-chains and stirraups—two cents per pound.
86. One gas-generator—twenty dollars.
87. Five tires for locomotive-engine driving-wheels—five cents per pound.
421 88. A lot of cast-iron pulleys—three cents per pound.
89. Lot of bull eye furnace-mouths—three cents per pound.
90. Lot of new wrought-iron sugar-mill coller-shafts, comprising 5 heavy shafts and 2 coupling-shafts—six cents & half per pound.
91. One lot of American pig-iron—one cent per pound.
92. One lot of American hard iron—one cent per pound.
93. One lot of American pig-iron—one cent per pound.
94. One lot of American pig-iron—one cent per pound.
95. One lot of Pittsburgh coal—twenty-five c'ts per bbl.
96. One lot of anthracite coal—six dollars per ton.
97. One lot bricks—eight dollars per thousand.
98. One lot of old lumber—fifty dollars for the lot.
99. One lot of seasoned mahogany, for pattern-makers' use—fifteen cents per foot.
100. One lot seasoned white-pine lumber, for pattern-makers' use—four cents per foot.
101. One lot of boiler-makers' rivets, various sizes—four & a half cents per pound.
422 102. One lot of sheet-iron and tank rivets, various sizes—nine cents per pound.
103. One lot of bolts and nuts, various sizes—nine cents per pound.
104. Two new cant-hooks—six dollars each.
105. One lot Mexican-copper ingots—12 & ½ cents per pound.
106. One coil pitch-chain for sugar-mills—one dollar & seventy-five cents p'r foot.
107. One lot sugar-mill *cane-caused* chain—twenty cents per foot.
108. One lot do., pitch-chain—one dollar & fifty cents per foot.
109. One lot bolts and nuts, assorted sizes, and loose new nuts, tapped, nine cents per pound.
110. One lot of ingot zinc—five cents per pound.
111. One lot pig-lead—five cents per pound.
112. One circular saw-blade, 54-inch diameter—one hundred and ten dollars.

113. One carboy muriatic acid and one carboy sulphuric acid—seven doll's & a half for the lot.
114. One lot of block-tin—thirty cents per pound.
115. Three large and one small tin tanks for oil, nearly new, with taps and two pumps—sixty dollars for the lot.
423 116. Lot of wood-screws and brads, assorted sizes—twenty-five dollars the lot.
117. Lot of India-rubber packing, and old and new India-rubber and leather belting—fifteen dollars.
118. A lot of sundries—forty dollars.
119. A lot of stocks and dies and tap-wrenches—fifty-five dollars.
120. Two lifting jack-screws—fifty dollars.
121. One small platform scale for counter—five dollars.
122. One lot of old files—one cent per pound.
123. One Ashcraft's steam-*guage*—eighteen dollars.
124. One lot ratchet-braces—five dollars each.
125. One lot railroad-spikes—five cents per pound.
126. Eleven brass connecting-cocks, 1 inch diameter—one dollar each.
127. Nine do. do. do. $\frac{7}{8}$; one do. do. do. $\frac{3}{4}$; and one coupling cock—ninety cents each.
128. Four brass connecting-cocks $1\frac{1}{4}$ inch diameter—three & a half dollars each.
129. Six do. water-cocks, $1\frac{1}{2}$-inch diameter; and one do $\frac{3}{4}$-inch diameter—three & half dollars each.
424 130. Twelve brass steam-cocks for cylinders—one dollar & thirty cents each.
131. Twelve brass steam-*guage* cocks—three dollars each.
132. Fifteen brass steam-*guage* cocks, two sizes—one dollar & seventy cents each.
133. Nine cylinder cocks—various sizes—one dollar & twenty cents each.
134. Seven steam-*guage* cocks—two dollars each.
135. Three oil globes—three doll's & fifty cents each.
136. Four hollow plug-cocks—two dollars & fifty cents.
137. Six goose-necks—brass—seven dollars each.
138. Four brass 2-inch diameter double-flange cocks—seven dollars each.
139. Three brass globe-valves $1\frac{1}{2}$-inch diameter—eleven dollars each.
140. $1\frac{1}{4}$ do. do. do.—ten dollars each.
141. 1 do. do. $2\frac{1}{4}$ do.—fifteen dollars each.
142. 3 do. do. 2 do.—fourteen dollars each.
143. 2 do. do. $1\frac{1}{2}$ do.—twelve dollars each.
144. 3 do. do. 1 do.—eight dollars each.
145. 1 do. do. $1\frac{1}{2}$ do. second hand—five dollars each.
146. Lot of finished brass castings—sixty cents per pound.
147. Lot of sand paper—ten dollars.
148. Lot of rough brass castings—new—nineteen cents per pound.
425 149. Six strap-joints for connecting-rods 2 × $2\frac{1}{4}$ inches, fitted with brass boxes and keys—fourteen dollars each.
150. Eleven strap-joints for connecting-rods $1\frac{3}{4}$ × 2 inches, fitted with brass boxes and keys—twelve dollars each.
151. Eight strap-joints for connecting rods $1\frac{3}{8}$ × 2 inches, fitted with brass boxes and keys—twelve dollars each.
152. Lot of boiler-tube hole-cutters—sixty-five dollars.

153. Lot of India-rubber railroad car-springs and large valves and washers—sixty cents per pound.
154. Lot of chasing-tools and taps—fifty dollars.
155. One new stock with dies—eight dollars.
156. Lot of patent canvass packing, and leather for valves—fifteen dollars.
157. Lot new files, assorted sizes—five dollars and fifty cents per dozen.
158. Lot of sundry strap-joints for connecting-rods and saw-mill sashes and pitmans—sixty dollars.
426 159. Lot of sheet-lead and pipe—seven cents per pound.
160. Lot of new sheet-iron—thirty-five cents per pound.
161. Lot of brass wire seives for moulders, assorted sizes—$2—two dollars.
162. Lot of iron wire—ten cents per pound.
163. Twenty-four new monkey-wrenches, assorted sizes—one dol. & twenty-five cents ea.
164. Four Stilman's steam-*gua*ges—twenty dollars each.
165. Four hand-brushes for moulders—twenty-five cents each.
166. Lot of joiner's tools—seven dollars.
167. Lot of shelving in upper store-room—thirty dollars.
168. Three office oil lamps, and lot of glass chimneys for same—five dollars the lot.
169. Lot of square & flat bar-iron, assorted sizes—three cents per pound.
170. Lot of round iron, assorted sizes—three cents per pound.
171. Lot of round rod-iron—three cents per pound.
172. Lot of blister-steel—seven cents per pound.
173. Lot of best cast-steel for chisels and tools—seventeen cents per pound.
427 174. Lot of boiler-iron, assorted sizes—four cents per pound.
175. Lot of wrought-iron boiler-heads, assorted sizes—six cents per pound.
176. Lot of sheet-iron, assorted numbers—four cents per pound.
177. Lot of second-hand wrought-iron boiler-heads—one cent per pound.
178. One second-hand tubular boiler twelve feet long, 30 inches diameter, and sixteen tubes—seventy-five dollars.
179. One lot gas-pipe, 2-inch diameter—five cents per foot.
180. The entire stock of cast-iron scrap on and about the premises—$\frac{3}{4}$ of a cent per pound.
181. The entire stock of wrought and iron scrap—one cent per pound.
182. Lot of sharp sand from Ellis' Cliffs—twenty-five cents per bbl.
183. Lot of fire clay, do.—fifty dollars for the lot.
184. Lot of old copper—eighteen cents per pound.
185. Lot of old brass—thirteen cents per pound.
186. Rack for iron, and rack on moulding floor for patterns—forty dollars the lot.
187. Winch on the iron breaking-drop, with about 100 feet chain
428 attached, drop-ball, switch-hook, and overhead gearing—one hundred dollars.
188. Lot of office furniture in lower office consisting of 2 new mahogany desks; 1 furniture; 2 letter cupboards; 1 wash-stand; 1 large book-case; 9 chairs; 5 desk 'tools, and lot of railing; one walnut desk, and a water-cooler, and 2 stoves—one hundred & fifty dollars.

189. One letter-press—five dollars.
190. Lot of furniture in drawing office up stairs, consisting of 3 desks, 1 secretarie, 8 stands for drawing-boards, 1 wash-stand, setts of drawers, 1 sofa, 3 tables, 10 chairs, 4 stools—fifty dollars.
191. Maps and lot of prints and drawings in frames—twenty-five dollars.
192. Large clock with three faces and two cases—$120—one hundred & twenty dollars.
429 193. The entire stock of patterns and drawings belonging to the company—five thousand dollars.
194. Four large second-hand wrought-iron shafts—three cents per pound.
195. Lot of new Whitney wheels for rail R. cars—twelve dollars each.
196. Lot of new iron-castings—one cent per pound.
197. Lot of blocks and falls—sixty dollars.
198. Lot of new copper pipe—forty-five cents per pound.
199. Lot of drawing-paper with frame and two drawing squares—thirty dollars.
200. A set of drawers for drawings—twenty-five dollars.
201. Two strap-joints 3 × 3½ in.—thirty-five dollars.
202. Four shop cranes—three hundred dollars.
203. Lot shear-steel for rail R. frogs—eight cents per pound.
204. Lot of boilermakers' strips—twenty dollars.
205. Lot of hoop-iron 1½ & ¾ in. wide—three cents per pound.
206. Lot of angle-iron—four cents per pound.
207. One second-hand engine, 15 × 24 in—one hundred & fifty dollars.
208. Lot R. road car-castings, viz: grease-boxes, saddles, bumpers—three cents per pound.
430 209. Lot of brass-foundries' tools, with all the wide flasks about the foundry—one hundred and fifty dollars.

(Signed) JOHN GEDDES.
CHA'S HUGHES.

Petition to pay rent.—Filed May 19, 1859.

To the honorable the judge of the fourth district court of New Orleans:

The petition of Richard Wells, of said New Orleans, acting in his capacity as syndic of the said creditors, respectfully shews: That he has in his hands cash arising from the sales made under the orders of this honorable court, to the amount of $25,000; that the said proceeds are subject to a privilege in favor of the lessors of the premises occupied by the said company, inasmuch as they arise from the sale of articles on the premises leased; that the rent of said premises is now in
431 arrears to the amount of $13,950, which is now due and payable, and bearing interest till paid; that the said lessors ask the payment of said arrears and tender bond and security for the amount so paid, in case their privilege is questioned upon the filing of the tableau of distribution herein, and that petitioner believes it to the interest of the creditors that the arrears due as aforesaid be paid in the conditions aforesaid in order to stop the interest accruing. Wherefore petitioner prays leave to make said payment, subject to the decision of the court on the final tableau of distribution in respect to the privilege claimed, and without prejudice to the rights of any of said creditors.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Order to pay rent.—Filed May 19, 1859.

Let the syndic herein be authorized to pay the amount of the
432 rent now due upon the lessors' executing bond and security, conditioned to return the same in case said payments should be declared to be illegal.

New Orleans, May 16, 1859.

(Signed) J. W. PRICE, *Judge.*

Petition for homologation of tableau.—Filed May 23, 1859.

To the honorable fourth district court of New Orleans:

The petition of Richard Wells, of said New Orleans, herein acting in his capacity as syndic of said creditors, respectfully shows that he herewith files a provisional tableau of distribution, which, after due and legal notice, he prays to have approved and homologated, and for all further aid and relief needful in the premises.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Provisional tableau of distribution in the case of the Belleville Iron-
433 *Works Company vs. Their Creditors, No. 12890.—Filed May 23,* 1859.

RECEIPTS.

Cash collected, the co.'s ac. against W. S. La-Branche & Co		135 50	
Less allowance for our charge, &c., of ship Brown		35 50	
			100 00
For lot earthenware pipe			47 50
Proceeds sheriff's sale 10th March, 1859, under order of court, as per his process-verbal, rendered, viz, gross amount of sale		36,966 62	
Less the following charges:			
Printing, N. Orl's Bee	$15		
Do. Picayune	7 50		
Sh'ff's fees, E. T. Parker	21 25		
Printing, Crescent	7 50		
Comm'n on sale on $36,927.18	197 13		
Process verbal of sale	50 00		
Cab hire	2 50		
Ferriage, expenses, labor, &c., for 1st & 2d sales from 10th M'ch, last.	300 00		
		600 88	
Net proceeds of sale			36,365 74
Proceeds sheriff's 2d cash sale, 29th March, 1859, as per his process-verbal, rendered of the same		750 51	
M'ch 1859, as per his process-verbal			
434 rendered, gross amount of sales		10,705 70	
Less the following charges:			
Printing, 12 mo's, sales, N. O. Bee.	$20		
" cash sale, sundry, do.	15		

" Picayune, 12 mo's sale...	10 50		
" " cash sale sundry	8 00		
Comm'n on cash sale of $750 51..	7 51		
" " 12 mo's sale of 10,605.70	65 52		
2 process-verbal of sale.....	25 00		
Drumming, 1 time.....	50		
Ferriage	2 50		
		154 53	
		10,561 17	
Nett proceeds of the 2 sales.....			11,301 68
Proceeds sale of 91,225 lbs. hoop-irons sold by co. to H. Fossman on his note at 9 mo's at 2½ c'ts per lb., with int. at 6 ₰ per ann., 91,225 lbs. *a* 2½ c. = ...		2,280 63	
9 mo's int. from 1st April, '59, added.....		102 63	
Face of note.....			2,383 26
Total am't of net receipts.....			50,198 18

DISBURSEMENTS.

Cash paid for 33 days' labor, arranging stock for the sh'ff's sale, vouchers 1, 2, 3, 4, 6, & 7.		49 50	
Cash paid petty expenses, such as P. O. stamps for circulars and letters sent by mail, ink, stationary, &c	$4		
435 Cash paid A. A. Lukey sundry petty expenses paid by him, ac. of the insolvency, (vouch. 9)	$1 50		
Cash paid J. Johnston's bill for meals served to appraisers while taking ac. of stock, (vouch. 5)...	10 00		
		15 50	
Cash paid True Delta office, bill for printing 200 catalogues for use of 1st sale..	$15		
100 do. do. 2d sale, voucher 8....	10		
Cash paid A. A Lukeys, bill for 6 weeks' serving, assisting in arranging stock for sale, and in delivering the same after the sale, (voucher 10)		125 00	
Cash paid A. Forey's, bill for 1 mo's services, ditto, (voucher 10)		99 00	
Cash paid Patrick Lynch for 4 mo's services as night watch over the premises, &c., *a* $45 per month, (voucher 13).....		180 00	
Cash paid W'm Nokea, engineer, balance due him on contract for taking to peices, cleaning and oiling, putting together again, and coating all the machinery in the foundry, which was indispensable to its preservation, (voucher 14)		50 00	
Cash paid Kuk & Benton,			

436 public weighers, for weighing 111, 4½ tons iron, &c., *a* 35c 390 08
Measuring a lot of cane car-chain, (voucher 12) 2 00
392 08

Cash paid owners of the Belleville Iron-Works property for back rent due them on the lease of the same, with 5 % interest thereon, from the dates at which the quarterly instalments respectively fell due to 16th May inst., under order of court, (vouch. 15) 14,583 75

Total am't of disbursements 15,519 83

Leaving for distribution as the court shall direct a net balance of 34,678 35

PRIVILEGED CLAIMS.

Provisional syndic's commissions, as allowed by law, according to the *Ker.* Statutes, cap. insolvent laws, sec. 13, and the exposition of the same by supreme bench, Kendig, insolvency, 1 × 3, of 1 % on the value of the goods and effects confided to his care as appraised by the insolvent himself in his schedule rendered into court, amount of appraisement on insolvent's schedule of
437 surrender on file in the clerk's office of this court, is $180,899.93, 1 % on which is 1,808 99

L. M. Day, esq., for fee as attorney for absent creditors' claims 250 00

Mess. Benjamin, Bradford & Finney, fee as attorney for insolvent claim 500 00
" " " for syndic 1,500 00
2,000 00

Cuvelier & Peters, notaries, for notarial services at called meeting of the creditors 50 00

Mewer, office, advertising meeting of creditors, &c 9 00

Messrs. Geddes & Hughes, appraisers appointed by the court to appraise insolvent's property in order to a sale thereof, for their services in the performance of that duty, $50 each 100 00

Definitive syndic's commissions as allowed by law, of 5 % on the first $50,000, 3 per cent. on all over that and not exceeding $100,000, &c.; total am't receipts, as at foot 1st page, 50,198.18, 5 % on $50,000 of which is 2,500 00
And 3 % $\frac{198\ 18}{50198\ 18}$, the balance, is 5 94
2,505 94

Owners of the Belleville Iron-Works, for the unexpired term of their lease of foundry premises to the co., which was to 31st Dec'r, 1865, 6 years and 9 mo's
438 from 31st March last, up to which time the rent has been paid, at $7,500 per annum, payable quar-

terly; privilege claimed on the proceeds of the sale of the moveables found on the place leased		50,625 00
Arthur Cook, New York, claiming vendor's privilege by subrogation on proceeds certain machinery sold by the sheriff at the 2d sale, and specified by him in his process-verbal thereof; but even if the privilege claimed exists, the same must be postponed to the privilege of the lessors		3,382 72
		$60,731 65
		139 85

ORDINARY CLAIMS.

Bills payable:			
A. Whitney & Sons	Phila	..	22,498 38
J. Jeffries & Sons	"	..	9,788 59
C. B. Campbell & Co	"	..	4 545 22
Holdane & Co	N. York	..	4,288 43
Tergot, Dally & Co	"	..	2,303 80
New England Car Co	"	..	1,325 53
Koppisch & Cook	"	..	1,267 72
Oathout Bro	"	..	3,019 30
Bridges & Bros	"	..	2,323 45
Edw. Knox	"	..	540 80
Phelps, Dodge & Co	"	..	847 96
439 Slipper & Goodley	"	..	1,129 92
Snow, Brooks & Co	"	..	300 69
Beale, Mellick & De Wit	"	..	564 36
Theo. Tillotson & Co	"	..	450 70
Smith, Hegeman & Co	"	..	690 58
Coddington & Co	"	..	1,231 20
R. B. Sumner	N. Orleans	..	16,200 00
F. F. Folger & Co	"	..	15,702 73
John Hughes	"	..	8,100 00
Wood & Low	"	..	11,562 33
Jno. Thornhill & Co	"	..	4,811 12
M. Carvin & Co	"	..	688 50
McGee & Kneass	"	..	315 19
E. W. Sewell	"	..	1,800 00
Open accounts:			
Arthur Cook	New York	..	378 93
Koppisch & Cook	"	..	8 40
Ch's B. Campbell	Philadelphia	..	108 52
Shep. Brown	New Orleans	..	2,726 07
J. J. Person	"	..	2,726 07
C. Fellowes	"	..	2,726 07
J. F. Hanneman	"	..	2,726 07
R. B. Sumner	"	..	2,726 07
F. F. Folger & Co	"	..	260 53
McGee & Kneass	"	..	107 22
A. Kearney & Co	"	..	67 30
C. Byrne	"	..	4 20
J. E. Caldwell	"	..	154 25

Carson & Armstrong	"	..	127 30
F. District Ferry	"	..	19 50
			$131,163 01

440 New Orleans, May 20, 1859.
(Signed) R. WELLS, *Syndic.*

Order.—Filed May 23, 1859.

Let due publication of the filing of the account of the syndic herein be made according to law.
New Orleans, May 23, 1859.
(Signed) J. W. PRICE, *Judge.*

Opposition of Cook & al.—Filed June 2, 1859.

To the honorable the judge of the fourth district court of New Orleans:

The petition of opposition of Arthur Cook, who is a privileged creditor, with vendor's lien of the insolvents for three thousand three hundred and eighty-two $\frac{73}{100}$ dollars, due by note, and three hundred and seventy-eight $\frac{93}{100}$ dollars, due by account of Holdane & Co., who are creditors for four thousand two hundred and eighty-eight $\frac{43}{100}$ dollars; of Tergot, Dally & Co., who are creditors of the insolvents for two thousand three hundred and three $\frac{80}{100}$ dollars; of the New England Car Company,
441 a corporate body, who are creditors for one thousand three hundred and twenty-five $\frac{53}{100}$ dollars; of Koppisch & Cook, who are creditors for one thousand two hundred and sixty-seven $\frac{72}{100}$ dollars by note, and eight dollars 40 cents by accounts; of Oathout & Bro., who are creditors for three thousand and nineteen $\frac{30}{100}$ dollars; of Bridge & Bro., who are creditors for two thousand three hundred and twenty-three $\frac{45}{100}$ dollars; of Edward Knox, who is creditor for five hundred and forty $\frac{80}{100}$ dollars; of Phelps, Dodge & Co., who are creditors for eight hundred and forty-seven $\frac{96}{100}$ dollars; of Slipper & Goodley, who are creditors for eleven hundred and twenty-nine $\frac{92}{100}$ dollars; of Sam. Brooks & Co., who are creditors for three hundred $\frac{69}{100}$ dollars; of Beale, Mellick & De Witt, who are creditors for five hundred and sixty-four $\frac{36}{100}$ dollars; of Theodore Tillotson & Co., who are creditors for four hundred and fifty $\frac{70}{100}$ dollars; of Smith, Hegeman & Co., who are creditors for six hundred and ninety $\frac{58}{100}$ dollars, and Coddington
442 & Co., who are creditors for twelve hundred and thirty-one $\frac{20}{100}$ dollars, all residing in New York; said amounts being due by promissory notes, of which due proof will be produced, with respect sheweth: That they oppose the charge of fourteen thousand five hundred and eighty-three $\frac{75}{100}$ dollars for back rent, and the charge of fifty thousand six hundred and twenty-five dollars for future rent placed by the syndic of the insolvents and allowed upon his tableau of distribution filed herein, on 23d day of May, 1859, in favor of the owners of the Belleville Iron-Works, and for grounds of opposition and reason why said claims should be rejected allege and charge as follows:

1st. That said sums are not due for rent, as alleged or otherwise; that by the terms of the lease, by virtue of which said rent of fifty thousand six hundred and twenty-five dollars is claimed, the said owners of said Belleville Iron-Works contracted, bound, and obli-
443 gated themselves to receive their rent in three and a half per

cent. on the amount of the work which should be done, prepared, or arranged by said Belleville Iron-Works Company; that the company having become insolvent and ceased operations, the said owners are not entitled in law to collect rents not yet due or earned from the mass of the property, in preference to the claims of these opponents; that said owners are not in law entitled to any rents after the date of said insolvency and cessation of operations at the foundry, to the injury of the rights of these opponents.

2d. That, at the time of the formation of said Belleville Iron-Works Co., the establishment in which their operations were afterwards carried on, and for which the rent aforesaid is claimed, was leased to F. W. C. Cook for five years at the rent of thirty-five hundred dollars per annum and that said lease was unexpired for the term of two years. That the said lease was merged in the company's rights, and assetts,
444 and was annulled 12th June, 1856, and a new lease was made and entered into, dated same day, between the owners of said Belleville Iron-Works and said Belleville Iron-Works Company, by which the said owners bound themselves to receive their rent in three and one half per cent. upon the amount of gross weights for work done and prepared as aforesaid, and the terms of said lease extended to ten years, dating from 1st January, 1856, and the amount of rent was unnecessarily and unreasonably increased from thirty-five hundred dollars per annum, as before, to an amount guaranteed by Cook & Fallon to be not less than seven thousand dollars per annum. Petitioners allege that said lease is a fraud upon the rights of opponents, it being intended by the parties thereto to create a prospective debt which would absorb the whole of the assets of the company—to enforce under the landlord's
445 lien the payment of a fictitious claim which was designed beforehand to swallow up all the property surrendered; that the property surrendered is the common pledge of all the creditors, but that said fraudulent lease was gotten up to secure to said owners an unjust preference, and the payment of a debt not due.

3d. That the lease for which a portion of the rent is allowed upon said tableau is yet unexpired, and consequently the rent is not yet due. That the unexpired term of said lease has not yet been sold by the syndic. That the company was first broken up, and the tools, machinery, stock, & fixtures sold separately from said lease, which has therefore become by said acts, comparatively worthless. That the proper season for the sale of said lease is passed, and the delay gives an improper advantage to said lessors; all of which acts were done with intent to injure the rights of opponents, and deprive them of any recourse
446 upon the property surrendered, for the amount of their several claims.

4th. That the premises are not worth the amount claimed for rent, and the said lessors never had with Cook & Fallon, nor the insolvents, a valid and binding contract of lease for the term and amount claimed by them, and improperly allowed as aforesaid.

5th. That said owners of the Belleville Iron-Works Company, lessors aforesaid, are not entitled to be paid the rent claimed and allowed on the tableau aforesaid, for this, that the insolvency of the above-named company was brought about by a conspiracy and fraud between Richard B. Sumner, one of said owners, and representing others, and Bernard Fallon and others for the purpose of defeating the just claims of the other creditors, and by a fictitious large claim for rent to absorb all the assetts of said company, and thereby deprive opponents of all recourse for their respective claims. Your opponents charge that said company was

not insolvent at the time of the surrender made herein, any more
447 than they were at the time of the commencement of their proceedings or at the time of their organization. That the apparent losses were unreal and fictitious, and untrue, and was made to appear by a false and fraudulent inventory, gotten up by for the purpose o defrauding your opponents of their just dues.

That said inventory is false in this, that many of the articles of stock in the inventory handed in to the board of directors on the day of 185 , were appraised at a great discount below the price actually paid for the same articles, and many other articles were entirely left out of said inventory which should have been placed therein. Your opponents allege that there was no necessity for the surrender aforesaid; that the company had suffered no losses; that its operations were being successfully and profitably carried on by F. W. C. Cook as chief manager of the works; that he was unwarrantably and deceitfully and without cause removed, by the fraudulent and deceitful acts of said Richard B. Sumner, Bernard Fallon, and others;
448 that he was not replaced at the foundry by a competent and skillful manager, and that, being unable to carry on their operations and complete their contracts, said company suspended operations. Opponents charge that all of these acts were done through fraud and collusion on the part of R. B. Sumner and B. Fallon and others, for the purpose of bringing about the surrender herein, and thereby deprive opponents of their rights; that for the purpose of deceiving said F. W. C. Cook, who was also a director of said company, as well as manager of the works, said Richard B. Sumner, who was also a director, sent a communication to said Cook, requesting him, the said Cook, not to be present at a certain meeting of said board of directors, promising that no action should be taken upon his difficulty with said Bernard Fallon; that said Cook, believing in these false representations of said Sumner, and believing that he was acting in the inferest of said company, abstained from going to said meeting of directors, and that at said identi-
449 cal meeting said Richard B. Sumner, in violation of his written promise and without good cause, moved and effected the expulsion of said Cook and obtained his removal; that said meetings of directors, whereby the ruin of said company was obtained by said Sumner, and grievous injury inflicted upon the other creditors, were irregular and in violation of the charter and by-laws of said company; that no notice was given to the directors, as required by the by-laws, except to such as favored the schemes of said Sumner and Fallon. Wherefore opponents charge that the claim for rent aforesaid *are* false and fraudulent, null and void, and should be rejected, and that opponents be recognised as creditors, respectively for the amounts above claimed, as shown by the tableau to be due, in preference to and to the exclusion of the aforesaid claims for rent. Opponents further pray for a trial by jury, for costs, and for all general relief.

(Signed) MICHEL & KOONTZ,
Of Counsel.

450 *Citation.*

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Mr. R. WELLS, *Syndic:*

You are hereby summoned to comply with the demand contained in the petition of opposition of which a copy accompanies this citation, or

deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable John W. Price, judge of the said court, the 2d day of June, in the year of our Lord 1859.

[SEAL.] (Signed) SAM'L GILMORE,
D'y Clk.

Sheriff's return.

Received, June 4, 1859, and, on the sixth of the same month and year, served a copy of this citation and accompanying petition and opposition of Cook and others on R. Wells, syndic herein, personally.

Returned same day.

(Signed) ROBERT SWAIN,
D'y Sh'ff.

451 *Notice to creditors, published in the Louisiana Courier.—Filed June 3, 1859.*

Notice is hereby given to the creditors of this insolvency, and to all others therein interested, to show cause, within ten days from the first publication hereof, why the account filed herein by the syndic should not be approved and homologated and the funds in his hands distributed accordingly.

By order of this court, this 23d May, 1859.

(Signed) SAM'L GILMORE,
D'y Clk.

Above notice, published in French on same date, in same paper.

Proof of publication.—Filed June 3, 1859.

Samuel Gilmore, being duly sworn, says that he finds the above annexed advertisement or notice in the Louisiana Courier, (a newspaper now or very recently published in this city daily,) in English and
452 French, on the 24th and 28th days of May, and in the Daily Delta, in English and French, on the 3d day of June, 1859, said Daily Delta printed and published in this city.

(Signed) SAMUEL GILMORE.

Sworn to and subscribed before me this 3d June, 1859.

(Signed) A. N. MURTAGH,
D'y Clerk.

Opposition of R. B. Sumner & others.—Filed June 4, 1859.

Now come R. B. Sumner, John Hughes and his wife, Madame Josephine Valette Hughes, and Francois Valette, and, for opposition to the tableau of distribution herein filed by R. Wells, syndic of the said creditors, respectively shew that they are the owners and lessors of the property lately occupied by the said insolvents; that they have the lessor's privilege on the proceeds of all the movables surrendered by the insolvents found on the property leased; that their said privilege is superior to all other privilege claims set forth on said tableau, even to law charges. Wherefore, they pray that said tableau be amended

453 by recognizing the privilege of these opponents accordingly, and that the proceeds of the movables aforesaid be applied to the payment of the claim of these opponents for rent by privilege and in preference to all other claims set forth in said tableau, and that the said syndic and the other privileged claimants, as allowed by said tableau, be notified hereof accordingly.

(Signed) R. B. SUMNER,
For Himself and Coproprietors.

Citation.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

Mr. R. WELLS, *Syndic:*

You are hereby summoned to comply with the demand contained in the petition of Sumner and others, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Hon. John W. Price, judge of the said court, this
454 4th day of June, in the year of our Lord 1859.

[SEAL.] (Signed) SAM'L GILMORE,
D'y Clk.

Sheriff's return.

Received, June 7, 1859, and, on the 8th of the same month and year, served a copy of this citation and accompanying petition of opposition of Sumner & als on Richard Wells, syndic herein, personally.

Returned same day.

(Signed) ROB'T SWAIN,
D'y Sheriff.

Judgment homologating account.—Filed June 4, 1859.

On motion of Benjamin, Bradford and Finney, of counsel for R. Wells, syndic of the said creditors, and on suggesting to the court that due notice has been given of the tableau of distribution filed herein, as will appear from the proof on file, and that the legal delay has elapsed, it is therefore ordered, adjudged, and decreed that the said tableau be, and the same is hereby, approved and homologated, so far as
455 the same is not opposed.

Rendered June 4, 1859.

Signed June 9, 1859.

(Signed) J. W. PRICE, *Judge.*

Petition for meeting of creditors.—Filed October 22, 1859.

The petition of R. Wells, syndic of the creditors of the insolvents, respectfully represents that there still remains undisposed of, of the effects surrendered by the insolvents, the lease which they held of the property employed in conducting their business, and that petitioner finds difficulty in determining the best mode and terms of disposing of the said lease, and is desirous to have the instructions of the creditors thereupon.

Wherefore petitioner prays your honor to order a meeting of the creditors of the insolvents to be convened before a notary to be appointed by your honor, and there to deliberate and determine concerning the disposition to be made of said lease, and all particulars relating thereto, and for all general and equitable relief.

456 (Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Order.—Filed October 24, 1859.

Let a meeting of the creditors herein be convened and held before T. O. Starke, esq., notary public in this city, on Friday, the 25th November, 1859, at 10 o'clock a. m., to deliberate and determine upon the disposition to be made of the lease herein surrendered.

October 24, 1859.

(Signed) H. B. EGGLESTON,
Judge of 5th District Court,
acting in the absence of J. W. Price.

Notice to creditors, published in the Daily Delta.—Filed, October 24, 1859.

The creditors of the Belleville Iron-Works Company are hereby notified that a meeting will be held before Theodore Starke, notary public of this city, on Friday, 25th November, 1859, at 10 o'clock a. m., for the purpose of deliberating and determining upon the most advantageous disposition to be made of the lease held by said company for the

457 premises in which they lately conducted their business.

By order of court, 24th October, 1859.

(Signed) K. LOEW, *D'y Clk.*

The above notice was published on same date in same paper, in French language.

Order and continuance.—Filed 2d December, 1859.

The oppositions herein filed to the tableau filed by the syndic came on to-day for trial—Benjamin, Bradford, & Finney, for syndic; Michel & Koontz, for opponents, and F. Perin—when, after hearing counsel and pleadings, on motion of F. Perin, for opponent Tillotson, it is ordered that his opposition, so far as the claim for rent is concerned, be discontinued; and, after hearing Michel & Koontz for Cook & als., it is ordered that the opposition filed herein be continued till Friday, the 16th instant, at 10 o'clock a. m.

458 *Opposition of Dale to account and tableau.—Filed December* 5, 1859.

To the Hon. J. W. Price, judge, &c.:

The petition and third opposition of William Dale, of the parish of Concordia, respectfully shows that he opposes the tableau and account herein rendered for this, to wit, that petitioner is and was the owner of certain property inventoried and seized by the sheriff in possession of the insolvents, viz:

One lot of hog-chains and stirrups numbered by sheriff's inventory and account of sales of 10th March, 1859, as No. 85, and sold for..... $48 12

One lot of old copper, No. 184, sold for	100 30
" " " " brass, No. 185, sold for	14 25
Amounting to the sum of	$162 67

One hundred and sixty-two dollars $\frac{67}{100}$ being the proceeds of this opponent's property, which was on deposit at the iron works of insolvents, in Algiers, and sold by the sheriff on the 10th March, 1859, as aforesaid.

Petitioners pray that this opposition be filed, and that, a final
459 hearing of said account and tableau, he have judgment and privilege, as owner, for the proceeds of said sale of said property, to the value of one hundred and sixty-two $\frac{67}{100}$ dollars and costs. And he prays for general relief.

(Signed) J. DUNLAP, *Att'y.*

Sheriff's return.

Received, New Orleans, December 6, 1859, and, on the same day, served a copy of the within on John Finney, esq., of the law-firm of Benjamin, Bradford & Finney, personally.

Returned same day.

(Signed) ROB'T SWAIN,
D'y Sheriff.

Rule and grounds.—Filed December 8, 1859.

On motion of Michel & Koontz, of counsel for Arthur Cook and others, sundry creditors of the insolvency of the Belleville Iron-Works Company, and on shewing to the court that this cause is erroneously
460 set down for trial on the ordinary opposition docket, it is ordered that R. Wells, syndic, & R. B. Sumner, and all parties in interest show cause, on Monday next, 12th December, 1859, why this cause should not be transferred to the jury docket, to be tried by a jury, for the reasons following, to wit:

1st. The petition of opposition charges said Belleville Iron-Works Co. with making a false and fraudulent surrender.

2d. That the law prescribes said charges shall be tried by a jury.

3d. That the jury fees have been paid to the clerk of this court, as required by law.

4th. That the petition of opposition asks for a trial by jury.

Sheriff's return.

Received, 8th December, 1859, and, on the same day, served a copy of this rule and accompanying grounds on R. B. Sumner, personally; same day served a similar copy on E. A. Bradford, esq., att'y for R. Wells, syndic herein, personally, who accepted service of the same.

Returned same day.

(Signed) ROB'T SWAIN, *Dy Sh'ff.*

461 *Petition to homologate the proceedings of meetings of creditors.—Filed December* 9, 1859.

To the honorable the judge of the fourth district court of New Orleans:

The petition of Richard Wells, of said New Orleans, acting herein in his capacity as syndic of the said creditors, respectfully shews that *at* a meeting of said creditors was duly held in pursuance of the order of

the court herein, before Theodore O. Stark, notary public, as will duly appear from the authentic copy of the deliberation of the said meeting herewith filed. Wherefore petitioner prays that the same be approved and homologated, and for all further needful aid and relief in the premises.

BENJAMIN, BRADFORD & FINNEY,
Att'ys for Syndic.

Order.—Filed December 9, 1859.

Let the accompanying process-verbal of the meeting of the
462 creditors of the Belleville Iron-Works Company be filed, approved, and homologated according to law.
New Orleans, December 12, 1859.
(Signed) J. W. PRICE, *Judge.*

Order: Rule dismissed.—Filed 12th December, 1859.

The rule herein taken by Michel & Koontz for A. Cook and others, on the 8th instant, came on to-day for trial.
Michel & Koontz for plaintiff in rule.
Benjamin, Bradford & Finney for defendants herein.
After hearing the pleadings and arguments of counsel, the court ordered that the said rule be dismissed, reserving to said opponents their rights to try the question of fraud before a jury.

Order fixing opposition—12th December, 1859.

Present, Hon. J. W. Price, judge.

On motion of James Dunlap, of counsel for W'm Dale, it is
463 ordered that the opposition of the said W. Dale be fixed for trial on Friday next, the 16th instant, at ten o'clock a. m., together with the other oppositions.

Order: Su'pœna duces tecum.—Filed 15th Dec'b'r, 1859.

Present, Hon. J. W. Price, judge.
On motion of Michel and Koontz, opponents herein, it is ordered that a subpœna duces tecum issue herein to J. J. Person, commanding him to bring into court on to-morrow, at ten o'clock a. m., the minutes of the proceedings of the Belleville Iron-Works Company.

Sheriff's return.

Received, New Orleans, December, 15, 1859, and, on the 15th December, 1859, served a copy of this subpœna duces tecum on J. J. Person, personally.
Returned same day.
(Signed) ROB'T SWAIN,
D'y Sheriff.

Order dismissing opposition of Holdane & Co., and order submitting case.—Filed 16th December, 1859.

464 This case came on to-day for trial on the oppositions to the tableau filed by the syndic—
Benjamin, Bradford & Finney for the syndic;

Michel & Koontz for A. Cook & als;
James Dunlap for Capt. Dale—
When came and appeared Mott & Fraser, of counsel for Holdane & Co., and moved the court, for the reasons filed, to dismiss said Holdane & Co.'s opposition. Whereupon the court ordered that the same be dismissed, and the trial of the opposition proceeded; and, after hearing pleadings, evidence, and arguments of counsel, the court took the same under consideration.

Testimony.—Filed December 16, 1859.

Int. & 3d opp. of Captain Dale is ordered to be continued.
On opp. of Cook:

F. W. C. COOKE, sworn. Says he knows Arthur Cook, of New York; knows he had business transactions with the Belleville Iron-Works Co. about some tools; believes this was in 1859. Arthur Cook acted
465 in these transactions as agent of the Belleville Iron-Works Co. in New York. Arthur Cook purchased merchandise for the company, such as various tools and planing machines, to the amount of about $5,000, the exact amount he does not recollect now; these tools, &c., were purchased from Gudge, Warner and Whitney, of New Hampshire; these tools, &c., were paid for in notes, which he, witness, endorsed for his brother A. Cook.

(Michel & Koontz, for app't A. Cook, offers in evidence the suit of Arthur Cook & Co. vs. The Belleville Iron-Works Co., No. 14342 of the docket of the 2d district court of New Orleans.)

The notes mentioned in the petition in said suit are the balance due in the bill for the purchase of the tools, &c. Mr. Arthur Cook took up the drafts at maturity and them himself; they were sent to witness, who handed them to Mr. Koontz, as protested drafts of the Belleville
466 Iron-Works Co., for collection. A large portion of the tools were unpacked at the time of the syndic's sale, except what had been put up, which consisted of one drilling-machine and two turning-lathes. As far as he can now remember, there were two turning-lathes that had been erected at the time of the syndic's sale. All the tools, &c., sold at that sale were in detached lots, and were sold separately.

Cross-examined:

These two turning-lathes were purchased by his brother for the Belleville Iron-Works Co., previous to the 1st November 1859. All the tools purchased by his brother, A. Cook, for the co., were received previous to the 1st November, 1857, and they were all in the possession of the co. and in their building from the time they were received by them, and up to the time witness left the company, and they continued on their property until sold by the sheriff on the premises. Witness' brother resides in New York, and made the purchases for the a'c of the
467 co. from the vendors, who resided in New Hampshire. The goods came by sea, he thinks, from New York, but is not certain.

(Counsel for syndic and Sumner, offer in evidence the lease "A" to Cook; also lease "B" to Cook and Fallon, and also the charter of the Co. in print annexed thereto; offer also agreement C and document D.)

RICHARD WELLS, syndic, sworn. Says that all the property which has been sold by the sheriff, and the proceeds of which are to be distributed as per tableau filed, consisted of movables property, which was on the premises occupied by the Belleville Iron Co., and remained there

until sold by the sheriff on the premises. This includes all the property claimed by W'm Cook, and which was on the property where the sheriff made the sale.

Counsel for syndic & Sumner offer in evidence the lease "A" to Cook. Filed December 16, 1859.

468 Counsel for syndic & Sumner offer also in evidence agreement C. Filed December 16, 1859.

Counsel for syndic & Sumner offer in evidence the lease "B" to Cook & Fallon. Filed Dec'b'r 16, 1859.

Lease by R. B. Sumner and others to Messrs. Cook & Fallon.

STATE OF LOUISIANA,
Parish of New Orleans and City of New Orleans:

Be it known that, on this twelfth day of June, in the year of our Lord one thousand eight hundred and fifty-six, before me, Richard Brenan, a notary public in and for the parish of Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally appeared Richard Bartlett Sumner, of this city, herein acting as well for himself as for and in behalf of Mistress Josephine Valette, widow of the late Mark
469 Thomas, as her attorney-in-fact, and John Hughes, and Francois Vallette, both of said parish of Orleans, the said parties being the sole owners of the Belleville Iron-Works, on the right bank of the river in this parish, of the first part, and Ferdinand William Charles Cook and Bernard Fallon, carrying on business as iron-founders in said Belleville Iron-Works, of the second part; which said appearers severally declared, whereas, by act passed in this city, on the twenty-fourth day of November, eighteen hundred and fifty-four, the said parties hereto of the first part, did lease, demise, and to farm let, for a period of five years, from the first of January, eighteen hundred and fifty-five, unto the said Ferdinand W. C. Cook, accepting the same, a certain portion of said Belleville Iron-Works, the engines, boilers, and machinery, as the same will fully appear, by reference to said above-recited act: Now, it having been agreed by and between the said
470 parties to the above-recited lease and the said Bernard Fallon, that a more extended lease, including the whole of the premises of the said Belleville Iron-Works, on such terms and for such time as shall be hereinafter recited and set forth, be made between the parties hereto:

The said parties to said lease of twenty-fourth November, 1854, hereby do mutually cancel and annull said lease, and which annullation thereof shall be of date as of the first day of January last past, 1856.

And, in consideration of the premises, for the sum and price, and on the terms, under the covenants and stipulations hereinafter set forth and expressed, the said parties hereto of the first part do hereby lease, demise, and to farm let unto the said parties of the second part, here present and accepting the same, all and singular, the Belleville Iron-Works, situate in this parish, on the right bank of the Mississippi River, and opposite the 3d district of the city of New Orleans,
471 which includes the building, the yard in the rear, and the following-described machinery, now on premises, to wit: One steam-engine and two boilers, one large planing-machine, one boring-mill, two upright drill-machines, one large turning-lathe, eight turning-lathes of different sizes, two face-lathes, one cutting-machine, one steam shear-punch and table, one binding-machine, one blacking-machine or coal-

grinder, two large cranes and chairs, one small crane and chair (of little value,) one drop-chain, two cupolas and fans, one sampson, two boring-shafts stands, twelve carpenters' benches, eleven tools, presses, or closets, five shank-ladles (half used,) two crane-ladels (half used,) ten anvils, one bill, one pair clamps, one portable file-maker's forge, one portable brazier's cupola with one pair tongs and five wooden flask clamps, eighteen vices and fixtures, two shafts with boilers, one small pair shears, one lever punch.

The said iron-works, being entitled to a right of way of the
472 width of twenty feet to the water-line of the river, equally through the property of the said R. B. Sumner and that of the late firm of Hughes, Valette, Thomas. Now the said appearers of the first part, according to their respective interests in said property, to wit, the said R. B. Sumner in one-half, the said John Hughes in one-fourth, the said Francis Valette in one-eighth, and the said Josephine Thomasb y her said attorney represented in one-eighth, do hereby guarantee unto the said parties of the second part and their assigns the use of said right of way, or a free passage of not less than twenty feet, either through their own land or land adjoining immediately the same, and under their control, pending the duration of this lease.

Now the conditions, time, terms, and stipulations, on which this lease has been granted and accepted, are as follows, to wit:

The lease of said premises, fixtures, machinery, and rights, in,
473 for, and during a period of ten years, to commence and be computed from the first day of January last past, 1856, and determine and end on the twenty-first day of December, in the year eighteen hundred and sixty-five.

The compensation for the use and enjoyment of said iron-works, engines, boilers, machinery, &c., pending the continuance of this lease, shall be, at the rate of three per cent. and fifty-hundre'ths of one per cent. on the gross amount of work done, prepared or arranged for by the said parties of the second part, as shown by the amount of claims or of accounts paid or unpaid that may be made by said parties of the second part for any work or transaction growing out of or from the prosecution of the usual foundry and machine-shop business, for which exclusive purpose only the property now leased is to be used. In order to reduce said claims and accounts to cash, a deductiontherefrom of
four per cent. shall be made before calculating the rent of three
474 and a half per cent. on the gross amount of work done or contracted for as above.

And the said parties of the second part hereby bind and obligate themselves that the nett amount of the rent to be paid by them for the use of said iron-works under this lease, shall never be less for any one year during the lease than the sum of seven thousand dollars.

On the first day of January of each successive year the said parties of the second part shall furnish to said parties of the first part an estimate of the probable amount of rent that will accrue and become due for the year; and they shall execute and issue rent-notes for said estimated amount, payable quarterly for the current year, except for this present year, the estimate for which is herein declared to be seven thousand five hundred dollars, payable as follows: One-half on the first day of July proximo, one-fourth on the first day of October, and one-
fourth on the first day of January, for which said parties of the
475 second part have this day issued three several promissory rent-notes, made by them to their own order, and by them endorsed, all dated this day: the one payable 1 July next for thirty-seven hundred

and fifty dollars, and those payable on the first of October and first of January next, each for eighteen hundred and seventy-five dollars, the which being delivered to said parties of the first part, the receipt of the same is hereby acknowledged, and full discharge and acquittance therefor granted.

On the first day of January, in each year, the said parties of the second part shall furnish said parties of the first part with a statement, showing the gross amount of accounts and claims for the preceeding year, as above specified, to which shall be added the amount of unfinished work on hand, as nearly as can be estimated, and on the sum total of both statements, less four per cent., as hereinabove agreed, the rent of three and a half per centum on the work, shall be calculated, and
476 any excess shown over the sum already paid for said year will be payable in cash to said parties of the first part, but should the amount of such rent not equal the account that has been paid, then the said parties of the first part shall pay to the said parties of the second part the difference between the amount of the rent paid, and that actually due, provided always that the nett amount of such rent shall never be less than the sum of seven thousand dollars as above agreed. Such estimated sum as may be added to the yearly settlement for unfinished work for any one year, shall be deducted from the total amount, upon which the rent for the ensuing year of three and a half per cent. is payable, that is, the rent per annum shall be full three and a half per cent. on the entire amount yearly of work executed, whether finished or not.

And the said parties of the second part hereby guarantee that
477 said percentage rent shall produce annually not less than seven thousand dollars.

The engine, boilers, and machinery herein enumerated at the conclusion and on the determination of the lease to be returned in good order and condition, natural wear and tear excepted, and any articles herein enumerated being lost or missing to be replaced by said parties of the second part at their proper cost and charge.

It is hereby agreed that the said parties of the second part are at liberty to make all changes or alterations in the machinery that they may desire, but at their own proper cost and charge, provided such changes or alterations shall not depreciate said machinery in value.

And also for and in consideration of the sum of five hundred dollars per annum, payable on the thirty-first day of December in each year during the continuance of this lease by the said parties of the second part in the following proportion, to wit: To said R. B. Sumner,
478 three-fourths; John Hughes, one-eighth; Francois Valette, one-sixteenth; and Josephine Thomas, one-sixteenth; they hereby guarantee unto said parties of the second part, during the term of this lease, the exclusive use of one hundred and forty-eight of river line for the purpose of mooring vessels, which one hundred and forty-eight feet of front shall adjoin the twenty feet of right of way above granted; and, until the thirtieth day of September, 1860, the said twenty feet right of way is declared to be fixed through the property of I. Thayer, now leased by him to John Hughes, to wit, the upper twenty feet of said property bounded by Elmira street on the upper line and between Patterson street and the river. And the said one hundred and forty feet of river line is declared to be and fixed until the aforesaid date of 30 September, 1860—the river line of the said property of Thayer, now leased to said John Hughes, measuring about one hundred and forty-five feet, more or less, exclusive of the twenty feet for right of
479 way above set forth. And, after said date of 30 September, 1860,

the owners of said iron-works may continue to said parties of the second part the same right of way and river line, as above specified, for the balance of the time this lease has to run, or they may substitute therefor a right of way of twenty feet, and river line of one hundred and forty opposite the Iron-Works between Chesnut and Elmira streets, at the option of said parties of the first part.

The twenty feet right of way in either case to adjoin the one hundred and forty feet river line hereinbefore mentioned. Whatever improvements exist on said river line, hereby leased, shall be kept by said parties of the second part, at their own proper cost and charge, in good repair. The right to use the batture between the river line and the public road, except for mooring-posts for vessels, is not granted or included in said guarantee, but said parties of the second
480 part may build wharves or platforms extending from said batture to the river, for their own use and convenience.

And, in consideration of this lease, the said parties of the first part have agreed to appropriate the sum of three thousand dollars, to be expended under the directions of said parties of the second part, for the purpose of encasing all the lower tier of the works with iron wire-grating, providing new iron gates, plastering staircases and offices throughout the building, and such other improvements to the property as said parties of the second part may wish to make; but any expense therefor over and above the said sum of three thousand dollars that may be incurred, must be borne solely by the said parties of the second part, who are hereby authorized to make any changes in the internal arrangement of the property that they may think proper to do, provided that no injury to, or depreciation of, the value of the property
481 be thereby made, and that such charges shall be at the proper cost of said parties of the second part; and the said sum of three thousand dollars shall be payable to said parties of the second part by instalments, on the completion of each successive change or addition. And should the said parties of the second part fail or neglect to pay a rent-note at its maturity, such failure shall work a forfeiture of this lease, and it shall be lawful for said parties of the first part, without any other proceedings, immediately after such failure to pay, to enter upon and take possession, for their own use and benefit, the property as it is hereby leased.

And it is also agreed that the window glass shall be kept in repair by said tenants; that the name of the property shall not be changed; and in case of any disagreement between the parties hereto, their differences shall be settled by arbitrators, one to be by each party
482 chosen, and in case of their not agreeing, said arbitrators to select their umpire, whose award shall be final and binding.

Thus done and passed in my office at New Orleans, aforesaid, in presence of Edward O. Willard and Benjamin Peters Lufe, competent witnesses, who have hereto signed their names, together with said appearers and me, notary.

(Original signed)

R. B. SUMNER.
F. W. C. COOK.
JOHN HUGHES.
B. FALLON.
FRANCOIS VALETTE.
BENJ. P. LUFE.
EDW'D O. WILLARD.
R. BRENAN, *Not. Pub.*

I hereby certify the foregoing to be a true copy of the original act of record in my current register. In faith whereof I have hereto signed my name and affixed the impress of my official seal this nineteenth day of June, A. D. 1856.

[SEAL.] (Signed) R. BRENAN,
Not. Pub.

483 Counsel for syndic and Sumner offer in evidence the charter of the company, filed 16th Dec'b'r, 1859.

Charter.

STATE OF LOUISIANA,
Parish of Orleans and City of New Orleans:

Be it known that, on this ninth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, before me, Richard Brenan, a notary public in and for the parish of Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally appeared Messrs. F. W. C. Cook, B. Fallon, Shepherd Brown, for Brown & Johnston; Cornelius Fellowes, T. P. Leathers, J. J. Person, R. B. Sumner, for owners of Belleville Iron-Works; W'm H. Avery, for Bogart, Foley & Avery; W'm Lorenzen, L. D. C. Wood, for self and Wood & Low; George Connelly, John C. Thornhill, John Hanneman, R. H. Allen, H. M.
484 Vance, for Byrne, Vance & Co.; and W. R. Miles, all of this parish of Orleans, who declared severally that, in conformity with their intention, they had agreed to form themselves, together with such others as may hereafter become associated with them into a body corporate in this State of Louisiana, under and by virtue of an act of the legislature thereof, entitled "An act for the organization of corporations for works of public improvements and utility," being number one hundred and thirty-one of the acts of said legislature, approved the fourteenth of March, one thousand eight hundred and fifty-five, they had especially associated themselves for the purposes hereinafter recited and set forth.

Therefore they now require me, notary, to specify herein the purposes, objects, designs, and stipulations of the said association, to which they hereby covenant and agree between themselves to abide by and to conform in all respects to the charter of said association, which, in compliance with said law, they now fix, as follows:

485 1. This association shall be known by the name of the Belleville Iron-Works Company of New Orleans; its domicil is fixed at the city of New Orleans; and the president of the said incorporation is the officer on whom citations shall be served.

2. The object and purpose of this association is to carry on the foundry or machine-shop business in all its details, such as the manufacturing of iron, brass, copper, and other metals into engines, boilers, machinery, and all other and such work as is appertaining to and usually conducted and carried on in foundries and machine-shops.

3. The capital stock of this association is fixed at the sum of two hundred thousand dollars, divided into two thousand shares, each of the value of one hundred dollars, and whenever, after the other requisitions of the law are complied with, the sum of one hundred and fifty

thousand dollars of said capital stock shall be subscribed for, the
486 business of said corporation shall be commenced. It is hereby agreed that, whenever a majority in amount of the stockholders shall deem it advisable, the capital of the company may be increased to such an amount not exceeding one million of dollars as such majority of the stockholders may determine, the payments of which new stock and the manner in which it shall be subscribed for to be fixed by said majority of the stockholders.

4. Each person, at the time of subscribing for the stock of the company now to be organized, shall pay, in cash, one-fifth of the amount by him or them subscribed, and, for the balance of the subscription-price, the said subscribers shall furnish their promissory notes payable respectively after the date of this act at three, six, nine, and twelve months, in favor of the president of this incorporation, each for an equal amount.

5. The duration of this charter shall be for the period of twenty-five years from the date hereof.

487 6. The management of the business and affairs of this corporation shall be confided to a board of seven directors, the first board to be elected by ballot from among the stockholders at their first meeting to organize under this charter, who shall hold office until the first Monday of April, one thousand eight hundred and fifty-eight, and all subsequent elections for directors shall be held by the stockholders at an annual meeting to be held on the first Monday of April in each year, and the directors shall hold office until their successors shall be elected and take their seats. The board of directors for the time being shall have full power to make, revise, and annull such by-laws and rules for the government of the company as they may think advisable to manage and transact all the business of the company, to control and direct its business and affairs in such manner as they may decide to be best for the interest of the stockholders.

488 7. The board of directors, at their first meeting after each election, shall, from among their own number, by a majority vote, elect their president, and, at such times as they or a majority of them shall deem most advisable for the interests of the company, declare dividends out of the net profits of its earnings.

8. In all matters in which the stockholders are required to vote, each share of stock shall be entitled to one vote, and a majority of the stockholders govern.

9. At the expiration of this charter, whether by its limitation or at any anterior date selected by a majority of all the votes, it shall be determined to wind up the affairs of the company by the assent of three-fourths of the stock represented at such meeting, the stockholders shall, from among their own number, select three persons who shall be styled the liquidating commissioners, whose duty it shall be to sell and
489 dispose of the entire property of the company on terms to be fixed by a majority of the stockholders in amount, at a meeting to be held for that purpose; they shall collect the debts due to the company, and, after paying its responsibilities, divide the net proceeds among the stockholders pro rata as far as such collections may be made.

10. Books of transfer shall be kept and certificates of stock issued which shall be signed by the president of the company and countersigned by the secretary.

Thus done and passed in my office at New Orleans aforesaid in presence of Alfred A. Ducros and Edward O. Willard, competent witnesses

who have hereunto signed their names, together with said appearers and me, notary.

(Original signed:)

F. W. C. COOK,
Two hundred and fifty shares.
SHEPHERD BROWN,
For Brown and Johnston, one hundred and sixty.
B. FALLON,
Two hundred and fifty shares.
C. FELLOWES,
One hundred shares.
490 T. P. LEATHERS,
Fifty shares.
J. J. PERSON,
One hundred shares.
R. B. SUMNER,
For owners of Belleville Iron-Works, two hundred shares.
W'M H. AVERY,
For Bogart, Foley & Avery, one hundred shares.
W'M LORENZEN,
Twenty shares.
W. R. MILES,
Twenty-five shares.
L. D. C. WOOD,
For Wood & Low, twenty-five shares.
L. D. C. WOOD,
Twenty-five shares.
GEORGE CONNELLY,
Fifty shares.
JOHN C. THORNHILL,
Forty shares.
JOHN T. HANNEMAN,
Fifty shares.
R. H. ALLEN,
Twenty-five shares.
BYRNE, VANCE & CO.,
By H. M. VANCE, *Thirty shares.*

Witnesses:
EDW'D O. WILLARD.
ALFRED A. DUCROS.
(Signed) R. BRENAN,
Notary Public.

I hereby certify the foregoing to be a true and correct copy of the original charter, of record in my current register.

In faith whereof I have hereunto subscribed my name and af-
491 fixed the impress of my official seal at New Orleans, this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-first.

(Signed) R. BRENAN,
Not. Public.

Recorded in book "Society No. 3," folio 545, March 24, 1857.

Counsel for syndic & Sumner offers in evidence Document D. Filed December 16, 1859.

NEW ORLEANS, 24*th February*, 1857.

R. P. SUMNER, Esq., *N. O.:*

DEAR SIR: After consultation with Messrs. Brown & Fellowes, I am authorized to make you the following outside offer:

For the foundry property, including all belonging to it, $115,000, on 1, 2, 3, and 4 years, with interest at the rate of 6% per annum from the date of the purchase; and for the batture, say 300 feet, @ $30,000,
492 on 1, 2, 3, and 4 years, with 6% per annum from date of the purchase.

The new company *and* retaining right to purchase on the above stated terms any time within three years from the date of the recording of the charter; and, in the meantime, the lease as made to Mess. Cook & Fallon to remain unimpaired. This offer is made provided a sufficient amount of money can be raised to carry out our views and expectations. You will furnish us your answer by to-morrow morning in order that Mr. may give Messrs. Cook & Fallon an answer.

I remain yours respectfully,

(Signed) J. J. PERSON.

Venire.—Minutes, 26th Dec'b'r, 1859.

The court ordered that a venire facias issue to the sheriff of this parish commanding him to draw according to law one hundred and fifty petit jurors to court during the January jury term in this court.

And that the jurors so drawn be summoned to be and appear
493 in our said court on Tuesday, the 10th January next, 1860, at ten o'clock a. m., and there to attend from day to day until discharged by due course of law.

Petition for sale of lease.—Filed January 9, 1860.

To the honorable the fourth district court of New Orleans:

The petition of Richard Wells, of said New Orleans, acting herein in his capacity as syndic of the said creditors, respectively shews that, at a meeting of creditors duly held and whose proceedings have been duly homologated by this honorable court, petitioner was authorized to apply for the sale of the unexpired term of the lease of the Belleville Iron-Works at public auction for the most it may bring, rent payable quarterly, without regard to the terms and conditions of the lease of the said premises to the said company, provided the assent of the
494 lessors of the company should be obtained, and that the said lessors have given their assent on the terms and conditions proposed, as the whole will appear per the process-verbal of the said meeting of creditors and from the subsequent act passed before T. O. Starke, not. pub., on the 7th December last, and therewith filed.

Wherefore petitioner prays that this honorable court will be pleased to order the sale of the unexpired term of the lease aforesaid for what it may bring, at public auction, by the sheriff of this honorable court, the rent to be paid quarterly, on the first day of January, April, July, and October of each and every year.

Petitioner further shews that there are also, on the premises leased, certain movables which were adjudicated at the previous sales made under order of this court, but which the purchasers have failed and neglected to accept and comply with the conditions of the adjudication; and petitioner prays that an order be made for the sale of all the

495 movables yet unsold; that the said sales be ordered to be made on the premises, after due and legal advertisements, and for all further aid and relief needful and proper in the premises.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Order for sale.

It is ordered that the unexpired term of the lease herein mentioned be advertised for sale at public auction, for what it may bring, by the sheriff of the parish of Orleans, after due and legal advertisements; the rents to be paid quarterly on the first of January, April, July, & October of each and every year; and also, that the moveables which were adjudicated at previous sales made under orders of this court, but which the purchasers have failed and neglected to accept and comply with the conditions of the adjudication, be resold for account of former purchasers by said sheriff, on the premises leased, after the usual
496 advertisements.

New Orleans, January 9, 1860.

(Signed) J. W. PRICE,
Judge.

Order: Case continued.—Minutes 13th January, 1860.

This jury case fixed for trial this day was called, and, after hearing counsel, for reasons assigned by the court, was continued till Monday next, at ten o'clock a. m.

Order.—Minutes 16th January, 1860.

The opposition of A. Cook to the tableau of the syndic, on the charge of fraud, came on to-day for trial by jury—Benjamin, Bradford, & Finney, for syndic, Michel & Kountz, for app't Cook.

When about to proceed to empanel the jury to try the charge of fraud made by A. Cook, counsel for syndic suggested to the court that there was nothing more to be tried herein on the oppositions
497 to the tableau filed, but what had already been submitted to the court, and that the charge of fraud could not be tried by jury.

After hearing pleadings and argument of counsel, for reasons orally delivered in open court, it is ordered that the same be treated as an opposition to the tableau, and to be tried by the court; and it is further ordered that said oppositions be placed upon the docket to be called and fixed by preference.

Petition to suspend sale.—Filed January 30, 1860.

To the honorable the judge of the fourth district court:

The petition of R. Wells, of said New Orleans, acting herein in his capacity as syndic, respectfully shews that, as he is advised, it will not be for the advantage of the said creditors to sell the unexpired term of the lease of the Belleville Iron-Works now advertised to be sold on the 31st inst: Wherefore petitioner prays that the order for the sale
498 thereof be revoked and suspended till the further order of the court in the premises, and for all further and needful aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Order to suspend sale.

Let the order of sale for the lease of the premises known as the Belleville Iron-Works, heretofore granted, be suspended until the further order of this court.

New Orleans, Jan. 30, 1866.

(Signed) J. W. PRICE, *Judge.*

Oppositions discontinued.—Minutes 10th February, 1860.

The opposition of Cook and others to the tableau filed by the syndic, was this day called for trial—Michel & Kountz, for opponents; Benjamin, Bradford & Finney, for syndic—when, after hearing pleadings and counsel, on motion of opponents' counsel, it is ordered that the oppositions of Cook and others filed herein be discontinued.

499 *Filing authority.—Filed February* 11, 1860.

The opposition of R. B. Sumner, John Hughes and his wife, Josephine Valette Hughes, and Francois Vallette, to the tableau of distribution filed herein is hereby withdrawn, and the clerk of the fourth district court is authorised and requested to enter a discontinuance of the said opposition accordingly.

(Signed) R. B. SUMNER.

(Signed) E. A. BRADFORD,
For Himself and Co-proprietors.

Witness:

Opposition of Sumner, Jno. Hughes, Josephine Hughes, F. Vallette, discontinued.—Minutes 11th Feb'ry, 1860.

On motion of Benjamin, Bradford and Finney, of counsel herein, and upon filing authority, it is ordered that the opposition of R. B. Sumner, of John Hughes and his wife, Josephine Valette Hughes, and of Francois Vallette, to the tableau of distribution filed herein be discontinued.

500 *Order: Rule.—Filed February* 14, 1860.

On motion of C. Roselius, of counsel for R. B. Sumner and others, the owners of the Belleville Iron-Works, and on suggesting to the court that, by the tableau of distribution filed herein and duly homologated by the judgment of this court, the said owners of the Belleville Iron-Works are recognised and admitted as privilege creditors for the rent of the said works, at the rate of $7,500.00 per annum, payable quarterly, and three instalments of the said rent or three quarterly payments, amounting to $5,625.00, are now past due and payable:

It is therefore ordered that Richard Wells, the syndic of the said creditors, do shew cause on the 15th instant, at 10 o'clock a. m., why the said amount of $5,625.00 should not be paid out of the funds in his hands, in pursuance of the judgment of homologation as aforesaid.

Service accepted Feb'ry 14, 1860.

(Signed) BENJAMIN, BRADFORD & FINNEY.

501 *Judgment on rule.—Minutes 15th Febr'y, 1860.*

The rule herein taken by R. B. Sumner and others, owners of the Belleville Iron-Works, on the 14th instant, came on to-day for trial—C. Roselieus for plaintiffs in rule; Benjamin, Bradford & Finney for defendant therein.

After hearing the pleadings and counsel, the court ordered that said rule be made absolute, with costs, and that Richard Wells, syndic herein, do pay over to plaintiffs in rule in pursuance of the judgment of homologation of the tableau of distribution, the sum of five thousand six hundred and twenty-five dollars.

Rendered February 15, 1860.

Signed February 25, 1860.

(Signed) J. W. PRICE, *Judge.*

Order and copies.—Filed Febr'y 20, 1860.

On motion of C. Roselius, of counsel for R. B. Sumner and
502 others, lessees, &c., it is ordered that Richard Wells, the syndic, show cause, on Saturday next, the 25th instant, at 10 o'clock a. m., why he should not apply for an order to sell the lease of the premises in which the insolvents carried on their business.

Sheriff's return.

Received, New Orleans, February 20, 1860, and, on the 21st day of the same month and year, served a copy of this rule on E. A. Bradford, esq., attorney for syndic herein, personally, who accepted service of the same.

Returned same day.

(Signed) ROB'T SWAIN,
D'y Sheriff.

Judgment on rule.—Minutes 25th Feb'ry, 1860.

The rule herein taken by C. Roselius for R. B. Sumner and others, on the 20th instant, came on to-day for trial—C. Roselius for plaintiff in rule; Benjamin, Bradford & Finney for def't therein—when,
503 after hearing pleadings and counsel, and no objections being assigned why the order for the sale of the lease should not be granted:

It is ordered that said rule be made absolute, and that the syndic proceed to sell the said lease according to law, and on the terms and conditions fixed by the creditors at their meeting of the 25th November last; and it is further ordered that the purchaser be required to give bond and security in the sum of five thousand dollars for the faithful performance of the obligation imposed upon him by the adjudication.

Opposition continued & order.—Minutes March 9, 1860.

The opposition of Capt. Dale, fixed for to-day, was called for trial, and, after hearing counsel for both parties, ordered to be continued for the purpose of taking the testimony of witnesses now absent, by consent,
and after this is done, to submit said opposition to the court
504 for adjudication.

RECORD OFFERED IN EVIDENCE.

ARTHUR COOK
vs.
BELLEVILLE IRON-WORKS COMPANY. } No. 14342.

Petition.—Filed 29th June, 1858.

To the honorable the judge of the second district court of New Orleans:

The petition of Arthur Cook, who resides in New York, herein represented by his duly appointed attorney-in-fact, Francis L. Cook, who resides in New Orleans, with respect sheweth:

That the Belleville Iron-Works Company, a duly incorporated body, domiciliated in New Orleans, J. J. Person, president, B. Fallon, secretary, are justly and truly indebted unto petitioner in the sum of three thousand three hundred and eighty-two $\frac{72}{100}$ dollars, with interest and costs, for this, to wit:

505 That said Belleville Iron-Works Company drew their two several drafts upon petitioner, the first dated New Orleans, November 20, 1857, for the sum of eighteen hundred dollars, at six months from date, the second, dated New Orleans, December 21, 1857, for the sum fifteen hundred and eighty-two $\frac{72}{100}$ dollars, at six months from date, which said two drafts were accepted by petitioner, and, at their maturity, respectively, were paid and taken up by petitioner.

Petitioner further sheweth that he accepted said drafts merely for the accom'odation of said Belleville Iron-Works Company and to afford them certain commercial facilities.

Petitioner further sheweth that said two drafts, accepted as aforesaid by petitioner, were transferred by said Belleville Iron-Works Company to Messrs. Gage, Warner & Whitney, of Nashua, New Hampshire, in part payment of the purchased price of certain tools & machinery

506 specified and set forth in the account hereto annexed and marked "A."

And petitioner alleges that by law he is subrogated to the rights and privileges of the vendors of said tools and machinery, and has a lien and privilege upon said tools and machinery for the amount of the drafts herein sued on, to wit, the sum of three thousand three hundred and eighty-two $\frac{72}{100}$ dollars, with interest and costs.

Wherefore petitioner prays that said Belleville Iron-Works Company be cited according to law; that, the annexed bond and affidavit being considered, a writ of sequestration issue to seize the property upon which petitioner has a privilege; that, after due proceedings, there be judgment in favor of the petitioner and against said Belleville Iron-Works Company for said sum of three thousand three hundred and eighty-two $\frac{72}{100}$ dollars, with interest at seven per cent. per annum on eighteen

507 hundred dollars, part thereof, from the 22d day of May, 1858, until paid, and like interest on fifteen hundred and eighty-two $\frac{72}{100}$ dollars, remainder thereof, from the 24th day of June, 1858, until paid, and costs of suit, with special privilege upon the property sequestered.

Petitioner further prays for all general and equitable relief.

(Signed) MICHEL & KOONTZ, *Att'ys.*

Document "A," annexed to petition, not to be found.

Affidavit.—Filed 29th June, 1858.

Personally appeared before me this day Mr. Francis Cook, of New Orleans, who, having been duly sworn according to law, deposes and says:

That deponent is attorney-in-fact, duly appointed, of Arthur Cook, who resides in New York; that the Belleville Iron-Works Company, J. J. Person, president, is justly indebted unto Arthur Cook, of
508 New York, in the sum of three thousand three hundred and eighty-two $\frac{72}{100}$ dollars, with interest, &c., being balance of purchase price of certain tools, machinery, &c., now in the possession of said Belleville Iron-Works Company, made, furnished, and delivered to them by Messrs. Gage, Warner and Whitney, of Nashua, New Hampshire; that, in part payment of said tools and machinery, said Belleville Iron-Works Company drew their two certain drafts upon said Arthur Cook—one for the sum of $1,800.00, due 22d May, 1858, the other for the sum of $1,582.72, due 24th June, 1858, which drafts were accepted by said Arthur Cook, and, to the best of deponent's knowledge and belief, were by him taken up and paid at maturity.

Deponent further says that his said principal has a lien and privilege upon said tools and machinery for the amount his said claim of $3,382.72, with interest.

(Signed) FRANCIS L. COOKE.

509 Sworn to and subscribed before me this 28th day of June, 1858.

(Signed) C. M. BRADFORD, *2d J. P.*

Order.—Filed 29th June, 1858.

Let a writ of sequestration issue in this case, as within prayed for, and according to law, on the plaintiff giving bond and security on the sum of five thousand and one hundred dollars; said bond conditioned as the law directs.

Bond.—Filed 29th June, 1858.

Know all men by these presents that we, Arthur Cook and E. H. Dix, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto Belleville Iron-Works Company, J. J. Person, president, in the sum of five thousand one hundred dollars, lawful money of the United States of America, to be paid to the said Belleville Iron-
510 Works Co., J. J. Person, president, heirs, executors, administrators, and assigns; for which payment well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated the 29th day of June, in the year of our Lord, 1858.

Whereas Arthur Cook has this day presented a petition to the honorable the 2d district court of New Orleans, praying for a writ of sequestration:

Now, the condition of the above obligation is, that we, the above-bound Arthur Cook and E. H. Dix, will well and truly pay to the said Belleville Iron-Works Company, J. J. Person, president, the defendants in said sequestration, all such damages as they may recover against us in case it should be decided that the sequestration was wrongfully obtained.

(Signed) ARTHUR COOKE, [L. S.]
p. p. G. L. COOKE.

(Signed) E. H. DIX. [L. S.]

511 Signed, sealed, and delivered in the presence of—

(Signed) W. B. KOONTZ.

Citation.

STATE OF LOUISIANA,
Second District Court of New Orleans:

Mr. J. J. PERSON,
President Belleville Iron-Works Co.:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the second district court of New Orleans, in ten days after the service hereof.

Witness the Honorable P. H. Morgan, judge of the said court, the 29th day of June, in the year of our Lord 1858.

(Signed) J. L. KELLY,
D'y Clerk.

Sheriff's return.

Received January 30th, 1858. On the same day I served a copy of the within petition and citation on the Belleville Iron-Works
512 Company, by handing the same to their president, J. J. Person, personally.

Returned same day.

(Signed) GEO. K. ROGERS,
D'y Sheriff.

Writ of sequestration could not be copied, not having been returned by the sheriff.

Default.—Minutes Nov'r 3, 1858.

On motion of Michel & Koontz, of counsel for plaintiff, and on showing to the court that the defendants have failed to answer, though duly cited, it is ordered that judgment by default be herein entered against them.

Exceptions and answer.—Filed 5th Nov'b'r, 1858.

The said defendants now come and file the following exceptions to the sequestration sued out herein, and ask that the same may be dismissed at the costs of the plaintiff.

1st. Because they have no lien or privilege on the property
513 sequestered, the contract being made in New York, and no lien is accorded by law.

2d. If any lien or privilege has existed, it has been lost.

3d. That the drafts sued on were accepted by Arthur Cook as an accom'odation, and they have no lien or privilege as such.

4th. That the affidavit is insufficient and defective. It does not state that he is apprehensive the property will be moved out of the State before he can have the benefit of his lien or privilege, nor does he make oath to the facts which induce his apprehension.

And now for answer to the merits, the defendants deny all the allegations in the plaintiff's petition, and pray to be dismissed, with costs.

(Signed) W. H. PAXTON,
Att'y for Def'ts.

Order.—Default set aside.—Minutes, 5th Nov'b'r, 1858.

On motion of W. H. Paxton, for defendants, and, on filing
514 their answer, ordered that the default herein entered on the 3d instant be set aside.

Order transferring case.—Minutes, 18th Jan'y, 1859.

On motion of W. H. Paxton, of counsel for defendants, and, on showing to the court that said defendants have made a cession of their property in the 4th district court of New Orleans, No. 12890 of the docket of said court, it is ordered that this suit be transferred to the 4th district court, to be settled contradictorily with all parties in interest.

Petition of appeal.—Filed April 11, 1860.

To the honorable the judge of the fourth district court of New Orleans:

The petition of Arthur Cook, of Tegot, Dally & Co., of the New England Car Co., of Koppisch & Cook, of Oathout & Bro's, of Bridges & Bro., of Edward Knox, of Phelps, Dodge & Co., of Skipper &
515 Goodly, of Snow, Brooks & Co., of Beale, Mellick & De Witt, of Theodore Tillotson & Co., of Smith, Hegerman & Co., and of Coddington & Co., all non-residents of the State of Louisiana, and residing in the State of New York, with respect, sheweth:

That they are informed, and so allege, that there is error in the judgment, order, & decree rendered by this honorable court of date the 29th day of December, 1858, accepting the cession and surrender, and ordering a meeting of the creditors in the matter of the Belleville Iron-Works Company vs. Their Creditors, No. of the docket of this honorable court; that said judgment, order, and decree is to the prejudice of petitioners, and will work to them irreparable injury:

Wherefore petitioners pray to be allowed a devolutive appeal to the supreme court of the State of Louisiana, returnable according to law, upon condition that petitioners execute a bond, with security, in the sum of five hundred dollars, and that J. J. Person, president
516 of said Belleville Iron-Works Company, and Richard Wells, syndic, be cited according to law, and for all general relief.

(Signed) MICHEL & KOONTS, *Att'ys.*

Order of appeal.

Let a devolutive appeal be allowed in this case, according to law, returnable in the supreme court of the State of Louisiana, on the fourth Monday of May next, on the appellants giving bond, with good and solvent security, in the sum of five hundred dollars, conditioned as the law directs.

New Orleans, April 11, 1860.

(Signed) J. W. PRICE, *Judge.*

Bond of appeal.—Filed April 11, 1860.

Know all men by these presents that we, Arthur Cook, Tergot, Dally & Co., New England Car Company, Koppisch & Cook, Othout Bro's, Bridges & Bro., Edward Knox, Phelps, Dodge & Co., Skipper &
517 Goadley, Snow, Brooks & Co., Beale, Mellick & De Witt, Theodore Tillotson & Co., Smith, Hegerman & Co., Coddington &

Co., as principals, and McCann and Haswell, as sureties, are held and firmly bound unto Belleville Iron-Works Company, J. J. Person, president, and Richard Wells, syndic, or either their executors, administrators, and assigns, in the sum of five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 10th day of April, in the year of our Lord one thousand eight hundred and sixty.

Whereas the above-bounden Arthur Cook, Tergot Dally & Co., and others this day filed a petition of appeal from a final judgment rendered against them in the suit of Belleville Iron-Works Co. vs. Their Creditors, in the fourth district court of New Orleans, on the twenty-ninth day of December, 1858:

518 Now, the condition of the above obligation is such that the above-bound Arthur Cook & Tergot Dally & Co., et als., shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said McCann and Harrell, their sureties, shall be liable in their place.

(Signed) ARTHUR COOK & ALS., [L. S.]
Per MICHEL & KOONTZ, *Att'y's.*
(Signed) McCANN & HARRELL. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) W. B. KOONTZ.

Certificate.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

519 I hereby certify that the foregoing one hundred and twenty pages do contain a transcript of all the proceedings had, as well as of all the documents filed and the testimony adduced on the trial of the cause wherein the Belleville Iron-Works Company is plaintiff, and its creditors are defendants, instituted in this court, and now on the records thereof, under No. 12890, (with the exception of lease "A" to Cook, agreement "C," and writ of sequestration, and document "A," annexed to the petition of Arthur Cook, in the case of Arthur Cook vs. The Belleville Iron-Works Co.)

I have hereunto signed my name and affixed the seal of the said court at the city of New Orleans on this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the independence of the United States of America.

[SEAL.] (Signed) GEO. LANDREAUX,
D'y Clerk.

520 *Order: Pleas in bar overruled.—Extract from the minutes of Monday, December 2, 1867.*

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. } No. 5177.

For reasons orally assigned by the court, it is ordered that the defendants' pleas in bar, be overruled and that they answer to the merits of the bill.

Answer.—Filed January 31, 1868.

In the United States circuit court for the fifth circuit and district of Louisiana, in chancery sitting:

R. B. SUMNER, F. VALETTE, JOHN HUGHES, et ux.,
vs.
JOHN W. HOLDANE, JAMES W. HOLDANE, and James Jeffries.

The joint and several answer of John W. Holdane, James W. Holdane, and James Jeffries to the bill of complaint of Richard B.
521 Sumner, Francis Valette, John Hughes and his wife, Josephine Valette Hughes, formerly Widow Thomas, complainants.

The defendants reserving to themselves all right of exception to the said bill of complaint for answer thereto, say:

1. That it is true, as charged, that James Jeffries is a citizen of Pennsylvania and that John W. Holdane and James W. Holdane are citizens of New York, trading under the name of Holdane & Co.

2. That it is true that the complainants did make a contract in the nature of a lease to Cook & Fallon, as charged in the said bill of complaint, and it is also true that, afterwards, the Belleville Iron-Works Company, a corporation organized under the laws of Louisiana, assumed the obligations of Cook & Fallon, with the consent of complainants, and that the said corporation and said complainants were bound to the performance of the said contract the same as the said
522 Cook & Fallon and the said complainants had been, as charged in said bill of complaint.

But these respondents aver that, by the terms of the said contract in the nature of a lease, the said complainants became the copartners, first of the said Cook & Fallon, and afterwards of the Belleville Iron-Works Company, to the extent of being participators in the profits of the business and liable to the creditors of said firm of Cook & Fallon and of the Belleville Iron-Works Company, in this, that the said complainants, by the terms of their contract, were to participate in the profits of the said firm and of the said company, and the said complainants were, by the terms of the said contract, entitled to an account from the said Cook and Fallon and from the said Belleville Iron-Works Company of the amount of their profits, disbursements, &c.; and the said complainants, from their said contract, could claim a preference and specific lien
523 over the individual creditors of any member of said firm, and they do in their said bill of complaint expressly claim a preference and specific lien over the creditors of said firm and company. Whereby the said complainants, neither in law nor in equity, are entitled to be paid in preference to these respondents out of the funds mentioned in the said bill of complaint, but are, in fact, liable for, and in good conscience bound to pay, the amount of the debts due these respondents by the Belleville Iron-Works Company.

3. These respondents do not know, and therefore cannot admit, that the Belleville Iron-Works Company aforesaid became insolvent according to the legal meaning of the word insolvent; nor do they know nor do they admit that the said company made a cession of their property and effects to their creditors in the fourth district court of New Orleans, according to the true and legal meaning of the word "cession."
524 But these respondents admit that, about the time named in the

bill of complaint, certain parties, styling themselves the Belleville Iron-Works Company, did file a petition in the fourth district court of New Orleans in the proceedings No. 12890 on the docket of that court, and praying to be allowed to make a surrender, &c., as is set forth in the transcript filed by complainants with their bill of complaint. But these respondents deny that the said proceeding was a cession by the Belleville Iron-Works Company of their property and effects to their creditors, or that the same had any effect whatever upon the rights of the creditors of the Belleville Iron-Works Company. And especially do they deny any effect upon the rights of these respondents; or that these respondents were legally stayed in their proceedings; or that the acceptance of the said pretended surrender by the 4th district court had any legal effect; or that the meetings of creditors, filing and homologating of tableaux, and distribution of money thereunder had any legal
525 effect whatever; or that any creditor of the Belleville Iron-Works Company was prevented from suing either by ordinary action or by conservatory process the said company, and seizing and applying by process of law the property of said company to the payment of debts, whether ordinary or privileged. And these respondents expressly aver that the law of Louisiana, under which the said Belleville Iron-Works Company existed and had its being, warranted no such surrender in insolvency as that attempted by the Belleville Iron-Works Company, and the same was an attempt to administer the effects of the company contrary to the provisions of law, and was of none effect. That the 4th district court of New Orleans was wholly without jurisdiction in the premises, and all its orders in the said proceedings in the case of The Belleville Iron-Works Company vs. Their Creditors, No. 12890 on the
526 docket thereof, were ab initio wholly void and of none effect.

4. It is admitted as true that the effects and movables on the premises held by the Belleville Iron-Works Company, under the said contract in the nature of a lease made as aforesaid with the complainants, were sold by the sheriff under some pretended order obtained by the pretended syndic of the said pretended insolvency, for a sum over forty-seven thousand dollars, as alleged by complainants, and that a pretended tableau of distribution was filed by the said syndic and homologated by said court, in which the balance of the proceeds of the sale of said effects were appropriated to the complainants as lessors, and in payment of rent by way of privilege, &c. And it is admitted that the sum of eleven thousand eight hundred and sixty-seven dollars, in the Bank of America, under seizure under the executions of these respondents, is a part of the proceeds of said sale as set forth by complainants.

But these respondents expressly deny the validity of all of
527 said proceedings, and the binding force of the same upon them or either of them; and the proceeds of that sale were liable to be seized and were seized by respondents as the property of that company from the ownership of which they had never been divested; and while, so far as these respondents are concerned, the sale by the sheriff was a good sale, and by the consent of the said company was translative of property, yet it did not divest the complainants for fifteen days thereafter of any right of lien or privilege they had as lessors upon said property for the payment of any rent that was then due or might become due under the terms of any lease they had made of said property, for, by the laws of Louisiana, the lessors of all immovable property are entitled to a privilege or lien upon the movable property of their tenants on the premises leased while the same remains thereon, and for fifteen
528 days after the removal of the same therefrom, which right the

said complainants could have exercised by invoking the process of the courts at any time before or for fifteen days after the said sale by the sheriff. The said surrender and all the proceedings thereunder having been ab initio void and of none effect, the said complainants had the same right of action against the Belleville Iron-Works Company as these respondents, which they could and should have exercised, and having failed to do so, they have lost whatever right, if any they had, and they have now neither equitable nor legal right to invoke the aid of this, a court of conscience, to enable them to enforce a stale claim.

5. That it is admitted that an opposition was filed to the pretended tableau of distribution in the name of these respondents, Holdane & Co., but they deny that they ever authorized the same or any other counsel or solicitors to represent them in the proceedings, other than those who represented them in this honorable court, and they aver that they
529 had no knowledge of said opposition at the time it was filed and are not bound thereby, and the said Jeffries denies that he opposed or made himself in any way a party to the same.

6. These respondents deny that the said judgment and homologation became final and absolute, and a conclusive judgment having the force of res judicata against The Belleville Iron-Works Company, and in favor of complainants, and against all parties thereto, and more especially as against these respondents, as the same was utterly null and void, and of none effect, and was res inter alios acta. And these respondents aver that the said acceptance of the said surrender by the 4th district court of New Orleans, the order of sale, the filing and homologation of the provisional account, and all other matters and things, were, by a judgment rendered on the 23rd of March, 1860, by the 4th district court of New Orleans, at the suit of this respondent
530 Jeffries, fully annulled in all their parts; and the said Belleville Iron-Works Company, and the said complainants were all parties to the said judgment of annullment, as will be seen by the transcript of the proceedings already filed and made part of these and the proceedings incident hereto, and already on file in the cases of Jeffries vs. The Belleville Iron-Works Co., set forth by the complainants, and by the said judgment which became final and exigible on the said 23rd day of March, 1860, the said complainants were placed upon the same footing with the other creditors of the Belleville Iron-Works Company, (if creditors they were, which is denied,) so far as their right of action was concerned.

7. These respondents admit that, after the sale of the property and effects of the Belleville Iron-Works Company by the sheriff, the proceeds of the sale were paid over to Wells, the pretended syndic, and that he deposited part of them in the Bank of America, and that
531 the same are the subject-matter of the present controversy; but they deny that the said Wells or that the Bank of America were or are the officers of the 4th district court of New Orleans, or that, in that particular instance, and for the sale of said property and effects, the sheriff was acting as the officer of the said court; but they aver that the sheriff was the mere agent selected by the said company and a portion of the creditors, as an auctioneer, to make sale of personal effects.

8. Respondents further deny that the said funds arising from the sale of said effects by the sheriff ever passed into the custody of the law, and they aver that R. Wells was but an agent of the said company, and a part of the creditors; that the sheriff was clothed with no further power or authority, and that when the proceeds of sale had

passed from the possession of the sheriff to that of Wells, all pretence of a legal custody of the said proceeds ceased.

532 These respondents deny that there was a privilege on the funds in the hands of Wells, who was but the agent of the company—at most of the company and a portion of the creditors of the company—and the same was in his hands, subject to garnishment or seizure.

9. Respondents do not know whether any sum is due to the complainants, if they are creditors, which is not admitted, and, therefore, they neither admit nor deny the same to be true, as set forth by complainants; but these respondents aver that they have been informed and believe that the said complainants received of the said Wells, the pretended syndic, large sums of money on account of their claim for rent, and which, if not already credited, shall go to the extinction of any claim set up by them.

10. That respondents do not know, and therefore cannot admit that Richard Wells, syndic, &c., drew a check, &c., and, therefore, deny the same, but they aver that no act of the said Wells, either as syn-

533 dic or otherwise, could confer any right on the complainants, nor preserve any right that they already had, and that all the actings and doings of the said Richard in the premises were the same as if they had not been acted and done.

11. These respondents do not know and cannot admit, and therefore deny that complainants caused any check to be presented to the Bank of America, and the same to be protested, as by them set forth in their bill of complaint.

12. They admit that they are seeking to have the said sum of $11,867.07 now in the Bank of America, paid over to them under seizures duly made, and aver that they are legally and equitably entitled to have the same done.

13. That these respondents, Holdane & Co., obtained judgment in the suits Nos. 3049 and 3090, on the law side of this court, and garnisheed the Bank of America, and made a motion against said bank, to compel the payment of the money to the satisfaction of the

534 same, and that this respondent, James Jeffries, obtained judgment, and is seeking payment of the same by garnishment of the said bank, &c., as set forth in the said bill of complaint, and these respondents aver that they are entitled to be paid the said sums of money, and that the said complainants are not entitled to any portion thereof.

14. These respondents, further answering, aver that the said complainants have no claim whatever on the fund now in the Bank of America; that the said complainants have set forth no case calling for the equitable interference of this court, and that if they had any remedy, which is denied, the same was pursuable at law, and not in this honorable court; that any privilege or lien that the complainants might have had was lost for want of prosecution of the same in the courts of law, which were open to them; that they could have no privilege or lien on the proceeds of property not in the hands of an officer of a competent court having jurisdiction of the subject-matter; that there never was a

535 legal seizure or seizure of property of the Belleville Iron-Works Company by process of a State court; and the proceeds now under seizure, at the instance of these respondents, was not in the hands of any officer of a State court, when seized by the United States marshal at the instance of respondents, nor have they been since; that they, the said complainants, were liable as co-partners of the said com-

pany, and cannot claim rent until all the creditors are paid. And these respondents, further answering, aver that, at the sale of the effects of the Belleville Iron-Works Company, the said lease mentioned and set forth in the said bill of complaint was also sold and was bought by one Converse for the whole term of said lease at the sum and for the price of dollars, and the said lease was transferred to said Converse, who, by the consent of all the parties to the said proceedings, became the owner of said lease; but these respondents aver that
536 they have been informed, and believe, and charge the fact so to be, that the lease was bought by the said Converse in trust, and for the use and benefit of the said *complainants, or one of them, and was held by the said complainants for the use and benefit of the said complainants,* and in equity, and in fact the said lease having become the property of the complainants, ceased to exist, and no claim for rent could be prosecuted against any one, as confusion took place. The complainants cannot be lessors and lessees both. That the ownership of the said lease was so put in the name of said Converse, in fraud of the rights of these respondents and the other creditors of the Belleville Iron-Works Company and to their great injury. And these defendants deny all and all manner of unlawful combination and confederacy, wherewith they are, by the said bill, charged, without this, that there is any other matter, cause or thing in the said complainant's bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein well
537 and sufficiently answered, confessed, traversed and avoided or or denied is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Reference approved.
F. A. WOOLFLEY, *Clk.*

(Signed) HOLDANE & CO.,
By ROBERT MOTT.
(") JAMES JEFFRIES,
By L. E. SIMONDS.

(Signed) ROBERT MOTT,
Solicitor.
(") L. E. SIMONDS,
Solicitor for Jeffries.

Replication.—Filed January 4, 1869.

The replication of John Crickard, executor of Richard B. Sumner, deceased since the commencement of this suit, the said executor having qualified in the second district court of New Orleans; Francis Valette, John Hughes and his wife, Josephine Valette Hughes, to the
538 answers of Holdane & Co. and James Jeffries.

These repliants, saving and reserving to themselves all exceptions to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the answer of the said defendants is uncertain, untrue, insufficient to be replied unto by these replicants, without this, that any other matter or thing whatsoever in the said answer contained or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these replicants are and will be ready to aver and prove as this honorable court shall direct. And humbly prays as in and by their said bill they have already prayed.

(Signed) BRADFORD, LEA & FINNEY,
Solicitors for Complainants.

Entry at rules.—Extract from chancery order docket.

January rules, 1869.—Monday, 4th Jan'y, 1869.

539 SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & Co. & AL. } No. 5177.

The defendants are hereby notified that the complainants, by their solicitors Bradford, Lea & Finney, have this day filed their replication to the said defendant's answer.

Rule.—Extract from the minutes of Thursday, 16th day of June, 1870.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & Co. & ALS. } No. 5177.

On motion of Semmes & Mott, solicitors for Holdane & Co., it is ordered that Sumner, Hughes & Valette, through Lea, Finney & Miller, esq'rs, their solicitors, and The Bank of America, through the proper officer thereof, shew cause, on Monday, 20th instant, at 11 a. m., why the sum of money deposited in the said Bank of America, under seizure in the above cases of Holdane & Co. vs. The Belleville Iron-
540 Works Company, amounting to eleven thousand dollars and upwards, shall not be invested in the bonds of the State of Louisiana, bearing seven per cent. interest, under the supervision of the solicitors of the complainants and of the solicitors of the defendants, Holdane & Co., and James Jeffries & Co., and that the said bonds, when purchased, shall be deposited in some bank in New Orleans as a special deposit, to be subject to the final decree to be rendered in the said case of Sumner & al. vs. Holdane & Co. & al., and not to be withdrawn from bank except on the further order of this court.

Marshal's return.

Received, June 17, 1870, by the U. S. marshal, and, on same day, month, and year, served a copy of the within by delivering it to the president of said Bank of America personally.

New Orleans, June 28, 1870.

(Signed) S. W. REED,
D'y U. S. Marshal.

541 *Order: Rule modified and made absolute.—Extract from the minutes of June 20, 1871.*

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & Co. } No. 5177.

HOLDANE & Co.
vs.
BELLEVILLE IRON WORKS Co. }

JEFFRIES & Co.
vs.
SAME. }

The rule taken on 16th instant was called, and by consent of the attorneys for the complainants and defendants, made absolute and modified as follows, viz:

It is ordered by the court that the amount on deposit in the Bank of America, garnishee herein, viz., eleven thousand eight hundred and sixty-seven $\frac{97}{100}$ dollars, be withdrawn from said bank by Samuel Smith, esq., who is hereby appointed for that purpose, and be by him invested, less brokerage, in five-twenty gold-interest-bearing bonds of the United States, and that said bonds be made a special deposit in the
542 Bank of America, or the Louisiana National Bank, to abide the final decree in this cause.

Order: Cause fixed.—Extract from the minutes, April term, 1871.

NEW ORLEANS, *Monday, June* 5, 1871.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, associate justice supreme court.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. } No. 5177.

Ordered that this cause be set for trial on the 8th instant, after disposing of suit 5931, and that all parties interested be notified hereof.

Notice of trial.—Issued June 6, 1871.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. } No. 5177.

543 You are hereby notified that this case is assigned for trial for Thursday, the 8th day of June, A. D. 1871, at 11 o'clock a. m.
By order of court.
Witness my hand and seal of said court at New Orleans, this 6th day of June, A. D. 1871.
[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*
To L. E. SIMONDS & ROBERT MOTT, esq'rs.

Marshal's return.

Received, June 6, 1871, by the U. S. marshal, and, on the same day, month, and year, served copies of the within notice, as follows: On L. E. Simonds, personally, in U. S. court-room; on Robert Mott, personally, in U. S. custom-house.
New Orleans, June 6, 1871.
(Signed) S. W. REED,
D'y U. S. Marshal.

Hearing and continuance.—Extract from the minutes of Saturday, June 10, 1871.

SUMNER, HUGHES, & VALETTE
544 *vs*
HOLDANE & CO. } No. 5177.

This cause came up for trial—Lea, Finney & Miller for complainants; Robert Mott and L. E. Simonds for defendants—when, after hearing

the pleadings, evidence, and argument, the cause is continued till the 12th instant, at 11 a. m.

Note of evidence.—Filed June 10, 1871.

SUMNER, HUGHES, & VALETTE *vs.* HOLDANE & CO. } No. 5177. Note of evidence.

Complainants offer 2 contracts of lease. (Record, No. 6817, supreme court of La., in case of Belleville Iron-Works Co.)

Defendants offer a statement of Mr. Mott, marked C; also records Nos. 3049 & 3090 of this court; record' Nos. 12939 & 12851, 4th district court, N. Orl's; also record No. 12930, same court; also opinion
545 supreme court of L'a, in case of Jeffries vs. Belleville Iron-Works Co. On behalf of Jeffries, L. E. Simonds, their solicitor, offer same evidence as that offered above; and, in addition, record No. 3226 circuit court, and copy record No. 12851, 4th district court.

2 contracts of lease offered by the complainants.

(To be found transcribed at pages 14 and 28.)

Record No. 6817, sup. court of Louisiana, in case of Belleville Iron-Works Company, offered by the complainants.

(To be found transcribed at page 371.)

Statement of Mr. Mott, marked "C," offered by defendants.

Circuit court of the United States for the district of Louisiana.

SUMNER, HUGHES, & VALETTE *vs.* HOLDANE & CO. & AL. } No. 5177.

Statement of Robert Mott.

546 That his firm of Mott & Fraser were the only attorneys or counsellors of Holdane & Co. in New Orleans that deponents knew of in the matter of the claims of that firm against the Belleville Iron-Works Company; that, while proceedings were pending in the United States circuit court for the district of Louisiana, or judgment had been recovered in the two cases of Holdane & Co. vs. The Belleville Iron-Works Company, No. 3049 & 3090 on the docket of the circuit court, I was informed that the name of my clients, Holdane & Co., had been used in some opposition or proceedings had in the attempted insolvent proceedings of the Belleville Iron-Works Company in the 4th district court of New Orleans, to which the name' of Michel & Koontz was filed as attorneys.

I immediately proceeded to the said 4th district court of New Orleans, and, having ascertained that my clients had given no authority
547 to other counsel or attorneys than Mott & Fraser, I drew a denial of the authority to use their names in said proceedings by the attorneys who had used it and filed the same in the record of that proceeding, and dismissed the opposition, and the minute of the proceeding in that case shews that such a document was filed therein by me, or by

my firm, but that the same is lost and cannot be found; and, although my recollection does not enable me to say so positively, I have no doubt that the said denial of authority was sworn to, as by law required, for I knew at that time, as well as I know now, that no denial of the authority of an attorney to act was effectual without being sworn to.

New Orleans, 26th May, 1870.

(Signed) ROBERT MOTT.

Record No. 3049 of the U. S. circuit court offered by defendants.

(To be found transcribed at page 50.)

548 *Record No. 3090 of this court offered by defendants.*

(To be found transcribed at page 112.)

Record No. 12939 of the 4th district court, New Orleans, offered by defendants.

(To be found transcribed at page 152 and also at page 317.)

Record No. 12851 of the 4th district court, New Orleans, offered by defendants.

(To be found transcribed at page 317.)

Opinion of supreme court of Louisiana in case of Jeffries vs. Belleville Iron-Works Co., offered by defendants..

(To be found transcribed at page 580.)

ADDITIONAL EVIDENCE OFFERED BY SOLICITOR FOR JEFFRIES ON THEIR BEHALF.

Record of suit No. 3226 of U. S. circuit court, offered on behalf of Jeffries.

549 U. S. circuit court.

JAMES JEFFRIES & SONS
vs.
THE BELLEVILLE IRON-WORKS CO., J. J. Person and R. Wells. } No. 3226.

Petition.—Filed 26th January, 1860.

To the hon. the circuit court of the fifth judicial circuit of the United States sitting in the city of New Orleans in the eastern district of Louisiana:

The petition of James, Thomas J., and Charles M. Jeffries, all of whom aver that they are citizens of the State of Pennsylvania, residing in the city of Philadelphia, and there carry on and do a manufacturing business under the style and in the joint name of James Jeffries and Sons, as copartners in trade, respectfully represent that the Belleville Iron-Works Company, a corporation established by authority of the
550 laws of the State of Louisiana and domiciled in the city of New Orleans, and J. J. Person and R. Wells, both citizens of the State

of Louisiana, residing in the city of New Orleans, are justly and legally indebted to petitioners in solido in the sum of thirty-three hundred and thirty-four $\frac{60}{100}$ dollars, with legal interest from 31st of March, 1859, for this, to wit:

1. Petitioners are the holders and legal owners of a promissory note which the Belleville Iron-Works Company caused to be issued, drawn by its president and secretary, and delivered to your petitioners in payment of a debt due to them by the said company, which said note is dated at New Orleans, on 28th December, 1857, and according *by* which the said company promised to pay, fifteen months after date, the sum of thirty-three hundred and twenty-three $\frac{20}{100}$ dollars, with current exchange on New York, to the order of its secretary, who endorsed the same in blank and delivered it to petitioners.

2. Petitioners further state that said note was presented to
551 the president of said company at its maturity, and payment thereof demanded, which was refused, and thereupon the same was protested for non-payment, and notice thereof given to all parties entitled to the same, all of which will appear from the said note and protest thereof hereto annexed for reference.

3. Petitioners further state that the said J. J. Person and R. Wells have become and made themselves legally liable to pay petitioners the amount of said note for this, to wit: The said Person and Wells, combining and confederating with other persons whose names are unknown to petitioners, for the purpose of harassing, delaying, and preventing petitioners from collecting the amount of their debt from the said company, on the 29th December, 1858, illegally and wrongfully caused a petition to be filed in the 4th district court of New Orleans, in the name of the said company, against their creditors, stating therein the
552 inability of said company to pay its debts, &c., &c., and procured from the judge of said court an illegal order staying all judicial proceedings against said company.

4. Petitioners further state that, pending the contestation which was caused by the filing of said petition, and the proceedings thereby instituted and carried on in said court, and before the same could be annulled and set aside by the supreme court of the State of Louisiana, which was finally done, the said R. Wells, aided and abetted by the said J. J. Person, and with his consent and knowledge, illegally and wrongfully took possession of all the property and assets of the said company, amounting in value, as stated on the schedule sworn to be correct by the said Person and annexed to the said petition, to one hundred and ninety thousand eight hundred and ninety-eight dollars, which the said Wells has wasted and sacrificed by illegal sales, the proceeds of which, amounted to only the sum of fifty thousand dollars, or thereabouts,
553 he has misapplied to the payments of extravagant fees and fanciful commissions for fabulous services pretended to have been rendered by counsellors at law, and syndics, and for rent which will not accrue for many years hence.

5. Petitioners further state that, by reason of the said illegal and wrongful acts and conduct of the said Person and Wells, the said company has become insolvent and unable to pay its debts, and that the said Person and Wells have made themselves legally liable to pay the same.

6. Petitioners further state that they have amicably demanded the payment of their debt from the proper officers of the said company, and from the said Person and Wells, who have refused and neglected to pay the same.

Wherefore, in consideration of the premises, petitioners pray that the said Belleville Iron-Works Company, through its proper officer,
554 and the said J. J. Person and R. Wells may be cited to appear and answer this petition; and that, after due proceedings had, a judgment may be rendered in their favor against the Belleville Iron-Works Company, the said J. J. Person and Wells, in solido, for the sum of three thousand three hundred and thirty-four $\frac{60}{100}$, with legal interest thereon from the 31 day March, 1859, until paid, and costs of this suit; and for such other and further relief in the premises as they are entitled to ask.

(Signed) W'M J. VASON, & SIMONDS & FENNER,
Counsel for Petitioners.

Note annexed to foregoing petition.

$3,323.29.] BELLEVILLE IRON WORKS-COMPANY,
New Orleans, 28th December, 1857.

Fifteen months after date, we promise to pay to the order of R. Wells, acting secretary, thirty-three hundred and twenty-three $\frac{29}{100}$ dollars, value received, with current exchange on New York.

[SEAL] (Signed) J. J. PERSON, *President.*
(Signed) R. WELLS, *Acting Secretary.*

No. 188. Due 1st April, 1859.

555 (Endorsed:)
(Signed) R. WELLS,
Acting Secretary.

Protest annexed to the foregoing petition.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that, on this thirty-first day of March, in the year one thousand eight hundred and fifty-nine, at the request of the cashier of and holder for the Citizens' Bank of Louisiana of the original note, whereof a true copy is on the reverse hereof written, I, Adolphe Boudousquie, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, presented said note to a clerk of Mr. J. J. Person, president of Belleville Iron-Works Company, the drawer, at his office, he not being then in, and demanded payment thereof, and was answered that no funds had been left with him to pay said note:

556 Whereupon I, the said notary, at the request aforesaid did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Adolphe Blache and Louis Dutour, both of this city, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) A. D. BOUDOUSQUIE,
Not. Pub.

Copy of note annexed to protest.

$3,323.29. | BELLEVILLE IRON-WORKS CO.,
New Orleans, 28th December, 1857.

Fifteen months after date, we promise to pay to the order of R.
557 Wells, acting secretary, thirty-three hundred and twenty-three $\frac{29}{100}$
dollars, value received, with current exchange on New York.

J. J. PERSON, *President.*
R. WELLS, *Act'g Secretary.*

(Endorsed:)

R. WELLS, *Act'g Sec'y.*

Answer of Belleville Iron-Works Co.—Filed February 7, 1860.

U. S. circuit court.

JAMES JEFFRIES & SONS
vs.
THE BELLEVILLE IRON-WORKS CO. & ALS.

Now come the Belleville Iron-Works Company, made defendants herein, and, for answer to the petition of said plaintiffs, deny generally all the allegations therein contained, and pray to be hence dismissed with all costs for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Attorneys for Def'ts.

558 *Answer of J. J. Person.—Filed April 25*, 1860.

U. S. circuit court.

JAMES JEFFRIES & SONS
vs.
BELLEVILLE IRON-WORKS CO. & ALS. } No. 3226.

Now comes J. J. Person, of the city of New Orleans, and, for his separate answer to the petition of the said plaintiffs, denies generally all the allegations therein contained tending to charge this defendant as indebted or liable to the said plaintiffs, in manner and form as set forth in their petition.

Wherefore he prays to be hence dismissed with all costs, and for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Answer of R. Wells.—Filed April 25, 1860.

JAMES JEFFRIES & SONS
vs.
BELLEVILLE IRON-WORKS CO. & ALS. } No. 3226.

559 Now comes the defendant, R. Wells, of said New Orleans, and, for his separate answer to the petition of the plaintiffs herein, denies generally all allegations tending to charge this defendant as in debt or liable to the said plaintiffs in the manner and form set forth.

Wherefore defendant prays to be hence dismissed with all costs, and for general aid and relief.

(Signed) BENJAMIN, BRADFORD & FINNEY.

Judgment.—Extract from the judgment docket.

Circuit court of the United States, fifth circuit and eastern district of Louisiana. April term, 1860.

NEW ORLEANS, *Friday, 27th April*, 1860.

Court met pursuant to adjournment.
Present, Hon. Theo H. McCaleb, district judge.
Absent, Hon. J. A. Campbell, presiding judge.

560 JAMES JEFFRIES & SONS *vs.* BELLEVILLE IRON-WORKS CO. & ALS. } No 3226.

This cause came on to be heard, and was argued by Simonds, esq., for the plaintiffs, and by E. A. Bradford, esq., for the defendants. On consideration whereof it was ordered, adjudged, and decreed that the plaintiffs, James Jeffries and Sons, do have and recover judgment against the defendants, The Belleville Iron-Works Company, for the sum of thirty-three hundred and thirty-four dollars and sixty cents, with interest thereon at the rate of five per cent. per annum from 31st March, 1859, till paid, and costs of suit; and further, it is ordered that the plaintiff's petition be dismissed as to the defendants J. J. Person and R. Wells.

Judgment rendered 27th April, 1860.
Judgment signed 2d May, 1860.

(Signed) THEO. H. McCALEB,
U. S. Judge.

561 *Fi. Fa.—Issued May* 21, 1860.

NOTA.—This document could not, after diligent search and enquiry, be found, and is either lost or mislaid.

Supplemental petition.—Filed May 21, 1860.

JAMES JEFFRIES & SONS *vs.* THE BELLEVILLE IRON-WORKS CO. AND J. J. Person & R. Wells. } No. 3226.

To the honorable the circuit court of the United States for the fifth circuit, sitting in and for the eastern district of Louisiana:

The supplemental petition of plaintiffs in the above-entitled cause, who are citizens of the State of Pennsylvania, respectfully shows that they have applied for a writ of fieri facias against the defendant, the Belleville Iron-Works Company, under a judgment against said
262 company in said cause for the sum of three thousand three hundred and thirty-four $\frac{60}{100}$ dollars, ($3,334.60,) with 5 per cent. per annum interest thereon from the 31st of March, 1859, till paid, and costs of suit. And these plaintiffs further represent that they have reason to believe and suspect that the Bank of America, a corporation domiciled

in the State of Louisiana, in the eastern district thereof, and incorporated under the laws of Louisiana, and citizens of said State of Louisiana; and A. Converse, and Richard Wells, and F. W. C. Cook, also citizens of Louisiana and residents of the eastern district thereof, have property or effects or money in their possession or under their control belonging to the said Belleville Iron-Works Company, or are indebted to said Bel eville Iron-Works Company; wherefore plaintiffs pray that the said Bank of America, and A. Converse, and Richard Wells, and F. W. C. Cook may be made parties garnishees hereto, and cited and ordered to answer, under oath in writing, within ten days from
563 service hereof the annexed interrogatories; and that after due proceedings judgment be rendered against them in solido in favor of plaintiffs (these petitioners) for the amount of the judgment aforesaid, and for costs and general relief, and for all other proper order and decree herein.

(Signed) SIMONDS & FENNER,
Pl'ffs Att'ys.

Interrogatories annexed to foregoing petition.

1. Have you any property, rights, credits, or money in your possession or control belonging to the Belleville Iron-Works Company? Is not the same of the value or amount of five thousand dollars?

2. Are you indebted to the said Belleville Iron-Works Company on any account or in any manner, whether for property of the said company or of any agent of said company, or in any other manner whatever? Are you not indebted to said company in the sum of five thousand dollars?

3. (An answer to this interrogatory is required from R. Wells
564 only.) Have you not received of the funds of the Belleville Iron-Works Company, or from the proceeds of the sale of property of the said company, a sum or sums of money claimed or retained by you or paid to you as so-called syndic or provisional syndic of the creditors of said company? And does not the same amount to five thousand dollars?

(Signed) S. & F.

Order.

Let this supplemental petition be filed, and let the Bank of America, A. Converse, Richard Wells, and F. W. C. Cook, be made party garnishees hereto, and cited to answer the interrogatories herein propounded, under oath and in writing, within the legal delay.

New Orleans, May 21, 1860.

(Signed) J. A. CAMPBELL,
Associate Justice S. C. U. S.

Answer of Mr. Converse, garnishee.—Filed 26th May, 1860.

JAMES JEFFRIES & SONS
565 *vs.* } No. 3226.
THE BELLEVILLE IRON-WORKS CO. & J. J. PERSON & R. WELLS.

A. Converse, made garnishee in the above-entitled case, being duly sworn, answers to the interrogatories of the said plaintiffs, as follows:

1st. To the first interrogatory he saith: No; except to Richard Wells, in his capacity as syndic of the creditors of the said Belleville Iron-Works Co. On the 10th March, 1860, the lease of the property, occupied by the said company for the unexpired term thereof, ending on the 31st December, 1865, was sold at public auction by the sheriff of the parish of Orleans, under the order of the fourth district court, and adjudicated to me at the rate of $1,000 per annum, payable quarterly, at the periods fixed by the original lease, say on the 1st January, April, July, & October of each and every year. Nothing has yet been paid on account of the rent accruing under said purchase.

(Signed) A. CONVERSE.

566 Sworn to and subscribed before me this 26th May, 1860.

(Signed) J. W. GURLEY, *Clerk.*.

Answer of Bank of America, garnishee.—Filed 26th May, 1860.

U. S. circuit court, New Orleans.

JAMES JEFFRIES & SONS
vs.
THE BELLEVILLE IRON-WORKS CO., AND J. J. Person & R. Wells. } No. 3226.

William G. Hewes, president of the Bank of America, herein made garnishee, now comes into court in obedience to the order of this hon. court, and answers the plaintiffs' interrogatories in the following manner, to wit:

To int. 1st. The Bank of America has no property, money, or rights whatever in its hands or under its control, except the sum of eleven thousand eight hundred and sixty-seven $\frac{97}{100}$ dollars which remains deposited in said bank to the credit of R. Wells, syndic of the
567 estate of the Belleville Iron-Works Company; but this money has already been seized in the hands of the bank, under process of garnishment, on execution in the following suits, to wit: Holdane & Co. vs. Belleville Iron-Works Co., No. 3090 of the docket of this court; Holdane & Co. vs. Belleville Iron-Works Co., No. 3049 of the docket of this court; J. Jeffries vs. Belleville Iron-Works Co., No. 12939 of the docket of the fourth district court of New Orleans.

To int. 2d. The Bank of America is not indebted to the defendants in any other way than that stated in the above answer to the 1st interrogatory.

(Signed) WILLIAM G. HEWES,
President.

Sworn to and subscribed before me this 26th May, 1860.

(Signed) J. W. GURLEY, *Clerk.*

Answer of R. Wells, garnishee.—Filed May 28, 1860.

U. S. circuit court.

568 JAMES JEFFRIES & SONS
vs.
BELLEVILLE IRON-WORKS CO. & OTHERS. } No. 3226.

Richard Wells, garnishee in the above suit, being duly sworn, answers to the plaintiffs' interrogatories, as follows:

I & II. To the first and second interrogatories: No; except it be as stated in the answer to third interrogatory.

III. To the third interrogatory: In my capacity, as syndic of the creditors of the said company, duly appointed, in the case of the "Belleville Iron-Works Company vs. Their Creditors," now pending in the fourth district court of New Orleans, No. on the docket of the said court, I have received funds and the proceeds of property surrendered by the said company, as the whole will appear from reference to the record of the said suit; but the whole of the funds, so received by me, have been distributed as shown by the tableau of distribu-
569 tion on file in said case, and which has been homologated and approved by the judgment of the court. All the funds so received have not yet been paid out, but the balance in my hands is held subject to the judgment aforesaid. The balance exceeds $5,000, but has already been attached by various parties in this court, as also in the fourth district court, whose names I do not now recollect, but the validity of the said attachments has not yet been determined.

(Signed) R. WELLS.

Sworn to and subscribed before me on this the 28th day of May, A. D. 1860.

(Signed) J. W. GURLEY, *Clerk*,
By O. LAVISSON, *D'y Clk.*

Answer of Cook, garnishee.—Filed May 29, 1860.

JAMES JEFFRIES & SONS
vs.
THE BELLEVILLE IRON-WORKS CO., AND J. J. Person & R. Wells. } No. 3226.

570 To 1st interrogatory: No.
To 2d interrogatory: No.

(Signed) F. W. C. COOK.

Sworn to and subscribed before me this 29 day of May, 1860.

(Signed) J.W. GURLEY, *Clk.*
By O. LAVISSON, *D'y Clk.*

Amended answer of Bank of America, garnishee.—Filed June 4, 1860.

U. S. circuit court, New Orleans.

JAMES JEFFRIES & SONS
vs.
THE BELLEVILLE IRON-WORKS CO., AND J. J. Person & R. Wells. } No. 3226.

The undersigned, William G. Hewes, president of the Bank of
571 America, herein made garnishee, now comes into court, and, in obedience to the order of this hon. court, and by way of amendment to the answer already by him filed herein, answers the plaintiffs' interrogatories, as follows:

To int. 1. The Bank of America has no property, money, or rights whatever in its hands or under its control, except the sum of eleven thousand eight hundred and sixty-seven $\frac{97}{100}$ dollars, which remains deposited in said bank to the credit of "R. Wells, syndic of the estate of the Belleville Iron-Works Company." But this money has already been seized in the hands of the bank, under process of garnishment, in the following suits:

1. Holdane & Co. vs. Belleville Iron-Works Co., No. 3090 of the docket of the U. S. circuit court, New Orleans.
2. Holdane & Co. vs. Belleville Iron-Works Co., No. 3049 of the same court.
3. James Jeffries vs. Belleville Iron-Works Co., No. 12851 of the docket of the fourth district court of New Orleans.

572 4. J. Jeffries vs. Belleville Iron-Works Co., No. 12939 of the docket of the fourth district court of New Orleans.

To int. 2. The Bank of America is not indebted unto the defendants herein in any other way than that set forth in the foregoing answer to the 1st interrogatory.

(Signed) WILLIAM G. HEWES,
President.

Sworn to and subscribed before me this 4th June, 1860.
(Signed) J. W. GURLEY.

Copy of record, No. 12851 of the 4th district court, offered as additional evidence on behalf of Jeffries.

STATE OF LOUISIANA,
Fourth District Court for the Parish of Orleans:

JAMES JEFFRIES
vs.
J. J. PERSON, PRESIDENT, AND R. WELLS, SECRETARY of the Belleville Iron-Works Company, et al. } No. 12851.

Judgment.

573 This cause came on to-day for trial—Simonds & Fenner for plaintiff; Benjamin, Bradford & Finney for defendants.

After hearing pleadings and counsel, and the law and the evidence being in favor of plaintiff, it is ordered and adjudged that the plaintiff have judgment against and recover of the defendants, J. B. Person, president, R. Wells, secretary, and the stockholders of the Belleville Iron-Works Company of New Orleans, in solido, the sum of three thousand two hundred and two $\frac{44}{100}$ dollars, with legal interest from the first day of October, eighteen hundred and fifty-eight, until paid; three dollars, costs of protest; and all costs of suit.

Rendered February 6, 1860.
Signed February 10, 1860.
(Signed) J. W. PRICE, *Judge.*

Fi. fa.

STATE OF LOUISIANA:

JAMES JEFFRIES
vs.
574 J. J. PERSON, PRESIDENT, R. WELLS, act'g sec'y, of Belleville Iron-Works Co. } No. 12851.

Fourth district court of New Orleans, parish of Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

We command you that, by seizure and sale of the property, real and personal, rights and credits, of J. J. Person, president, R. Wells, secre-

tary, and the stockholders of the Belleville Iron-Works Company of New Orleans, in solido, in the manner prescribed by law, you cause to be made the sum of three thousand two hundred and two $\frac{44}{100}$ dollars, with legal interest from first day of October, one thousand eight hundred and fifty eight, until paid, three dollars costs of protest, and also the sum of fifty-one dollars and eighty cents costs, as well as
575 your own costs and charges, to satisfy a judgment rendered against the said defendants, in our fourth district court of New Orleans, on the sixth day of February, one thousand eight hundred and sixty, in favor of James Jeffries, and how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the Honorable John W. Price, judge of the said court this twenty-fifth day of February in the year of our Lord one thousand eight hundred and sixty.

(Signed) G. LUMINAIS, *D'y Clk.*

Sheriff's return on fi. fa.

Received, February twenty-seventh, one thousand eight hundred and sixty, and, on the same day, month, and year, I made a general seizure, in the hands of the president of the Bank of America, Benjamin, Bonford, and Finney, and Richard Wells, all the right, title, and in-
576 terest, money, or property, which they or either of them might have in their possession or under their control belonging to the defendants, the Belleville Iron-Works Company. From said seizures nothing came into the sheriff's hands. And, on the ninth day of March, one thousand eight hundred and sixty, I levied this writ on the lease of the foundry and premises lately occupied by the Belleville Iron Works Company, situated on the opposite side of the river, and generally known as the Belleville Iron-Works, to expire on the thirty-first day of December, one thousand eight hundred and sixty-five; and, on the twenty-sixth day of March, one thousand eight hundred and sixty, I made a general seizure, in the hands of F. W. C. Cook, all the right, title, interest, money, or property which he may have in his possession or under his control belonging to the defendants. And, on the thirtieth day of April,
577 of the same year, I made a similar one in the hands of A. Converse. From said seizures nothing came into the sheriff's hands. No other property found, after due demand made of all parties; and this writ having expired, I made this return, and at the time of the returning of this writ, I requested the clerk of this honorable court to furnish me with a copy of the same, together with all my proceedings thereon, in conformity to law.

Returned May seventh, one thousand eight hundred and sixty.

JOSEPH GROS, *D'y Sh'ff.*

Answer of Bank of America to interrogatories.—Filed March 6, 1860.

JAMES JEFFRIES
vs.
J. J. PERSONS, PRESIDENT, AND R. WELLS, acting secretary, of the Belleville Iron-Works Company, &c.

578 The answer of the Bank of America, garnishee on execution in the above-entitled suit, to the interrogatories herein to it propounded by the undersigned, its president, says :

To int. 1 the undersigned answers: No. But he also, at the same time, says that there is deposited in the Bank of America to the credit of R. Wells, syndic of the estate of the Belleville Iron-Works Company, the sum of eleven thousand eight hundred and sixty-seven dollars seven cents, but that the same has been seized in the hands of the said bank on or about the day of January, one thousand eight hundred and sixty, under writs of execution issued in the following cases, viz: Holden & Co. vs. Belleville Iron-Works Company, No. 3049; and the same vs. the same, No. 3090 of the docket of the U. S. circuit court in and for the eastern district of Louisiana, at New Orleans—in the former case, for the sum of eight thousand dollars, and in the latter, for the sum of three thousand dollars.

579 WILLIAM G. HEWES, *Pres.*

Sworn to and subscribed before me, March 6, 1860.

J. O. CHALON, *Clerk.*

Certificate.

I, George P. Fernald, clerk of the fourth district court for the parish of Orleans, hereby certify that the above and foregoing eight pages do contain a full, correct, and complete transcript of the judgment, fi. fa. and sheriff's return, and answers of the Bank of America, garnishee in the cause wherein James Jeffries is plaintiff, and J. J. Person, pres't, et al., are defendants, which said cause was instituted in the fourth district court of New Orleans, (the records of which court have been transferred by an act of the legislature of this State to the fourth district court for the parish of Orleans,) on the tenth day of December, in the year
580 of our Lord eighteen hundred and fifty-eight, under the No. 12851.

In testimony whereof I hereunto set my hand and affix the seal of said court, at the city of New Orleans, on the eighth day of June, in the year of our Lord eighteen hundred and seventy-one, and in the ninety-fifth year of the independence of the United States.

[SEAL.] (Signed) GEORGE P. FERNALD, *Clerk.*

Opinion and decree of supreme court of Louisiana, offered by defendants, (reported in 18th La. Ann. Reports, page 685, et seq.)

In supreme court of the State of Louisiana.

JAMES JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO.

Appeal from the fourth district court of New Orleans. Price, *J.*

Simonds & Fenner, for appellant.
C. Roselius and B. Bradford and Finney, for appellees.

581 LABAUVE, *J.*

On the 18th of January, 1859, the plaintiff filed below a petition showing that the defendant The Belleville Iron-Works Co., a corporate body organized and chartered by authority of the laws of the State of Louisiana, and domiciliated in the city of New Orleans, was justly indebted to him in the sum of $3,262.86, with interest, etc. He further

stated that he was advised that, on the 29th day of December, 1859, an ex-parte order was granted by the judge below, upon the petition of the defendant, praying to be allowed to make a voluntary cession of its assets to its creditors, staying all proceedings against the person and property of the said company; that said order was illegal, and improvidently granted by the said judge; therefore it should be annulled and vacated for this: that corporations such as the defendant in this case have no right, under the laws of this State, to make a
582 surrender of their property to their creditors, and obtain the benefit of the insolvent laws of this State, and that the institution of the proceedings by the said defendant against its creditors for that purpose is only calculated to harass and delay its creditors in collecting their debts. Wherefore, the plaintiff prayed in substance that the Belleville Iron-Works Co. be cited, through its president, J. J. Person, and that, after due proceedings had, the order heretofore granted by the judge staying all proceedings against the person and property of the defendant on the petition of the defendant on file in court be annulled and vacated, and that the defendant be decreed to pay petitioner $3,262.68. On the 24th of February, 1859, on motion of plaintiff's counsel suggesting to the court that R. Wells had been elected syndic of the creditors of the defendant since the institution of this suit, it
583 was ordered by the court that R. Wells, syndic, be made a party to the suit, etc. On the 12th March, 1859, R. Wells filed an exception as follows: Now comes Richard Wells, made party herein in his capacity of syndic of the said defendant's creditors, and excepts to the petition of said plaintiffs that he cannot proceed in the manner and form attempted herein, inasmuch as the said defendants have made a cession of their property to their creditors, the same has been duly accepted, and stay of proceedings granted thereupon, as will appear from reference to the suit now pending in this honorable court, entitled Belleville Iron-Works Co. vs. Their Creditors, the plaintiff herein cannot prosecute this suit, but the same must be cumulated with the said insolvent proceedings.

Whereupon said appearer prays that the exception be maintained, and that he be hence dismissed, with costs and general relief.

On 2d May, 1859, the court sustained the exceptions as follows:
584 For the reasons assigned and on file in the case of Jeffries vs. Belleville Iron-Works Co., No. 12851 of the docket of this court, it is ordered that the exception herein filed by Richard Wells, syndic, be sustained, and that this cause be cumulated with the insolvent proceedings of the Belleville Iron-Works Co. vs. Their Creditors.

From that judgment the plaintiff James Jeffries appealed to the supreme court. There the judgment of the district court was reversed, and the case remanded to the court below, to be proceeded in according to law.

In their decision the supreme court say that a corporation, created under the act for the organization of corporations for works of public improvement and utility, approved March 14, 1855, cannot avail itself of the provisions of the act relative to the voluntary surrender of property, approved March 14, 1855, sec. 15, A. 19.

585 The case being thus remanded, the court below, on the 22d March, 1860, rendered the following decree:

It is ordered, adjudged, and decreed that the order of the court entered on the 29th December, 1858, in the case of the Belleville Iron-Works Co. vs. Its Creditors, No. 12890 of the docket of this court, staying all judicial proceedings against the property of said company be vacated

and annulled; and it is further ordered that the plaintiff do have and recover of the defendant, the Belleville Iron-Works Co., the sum of $3,262.86, etc.

The judgment is in accordance with the prayer of the petition.

The plaintiff moved for a new trial, which was refused.

Now, that judgment is final, (being unappealed from,) and is res judicata, and the question arises as to its effects. It is contended by the appellant that it annuls and sets aside all the elements and decrees comprised in said order referred to of the 29th December, 1858;
586 the appellees contend that it only annuls that part of it staying all judicial proceedings against the property of said company. The question is then presented, Is that order accepting the cession annulled? If so, the creditors were divested of their quasi ownership in the property so ceded, and the plaintiff was right in seizing the property and money in the hands of R. Wells and others, as was done; but if that order, accepting the cession, was yet in force, such proceedings were illegal. We think that part referring to the staying of the proceedings is descriptive and not restrictive of the order accepting the cession.

We now come to the proceedings which have brought the case before us. The plaintiff, after having obtained judgment against the said company, proceeded to execute the same by a fi. fa. on the property, rights, and credits of said company, and guarnisheed the Bank of
587 America, Richard Wells, and others, and interrogatories were propounded to and answered by them. The garnishees showed that they had nothing in their hands belonging to the Belleville Iron-Works Co., and what they had belonged to the creditors of said company, represented by their syndic, R. Wells.

After the answers of the garnishees to the interrogatories propounded to them, the plaintiff took a rule upon said garnishees to show cause why judgment should not be entered up against them on their answers.

To that rule defendants excepted as follows:

The defendants now appear, and for their peremptory exception to the rule herein, say: that, according to the showing of the actor in said rule, the proceeding cannot be sustained, as it attempts to annul or ignore the proceedings of the Belleville Iron-Works Co. vs. Its Creditors, and these respondents contend that if said proceeding can be annulled
588 at all, a regular suit for that purpose must be instituted in the ordinary form of judicial proceedings: Whereupon, respondents respectfully pray that this exception may be sustained, and the rule dismissed with costs.

Upon the trial of said exception the court rendered judgment as follows:

After hearing pleadings and the exceptions filed herein by defendants in the rule, the court sustained the same, and ordered that the rule be dismissed, with costs.

From that judgment the present appeal is taken by the plaintiff in the rule.

We are of the opinion that the judgment rendered on the 23d March, 1860, fully annulled, in all its parts, the order dated 29th December, 1858, and allowed the creditors to proceed as if there had been no surrender. We have before us nothing but the judgment upon the exceptions, and the case has to be remanded. It is, therefore, ordered,
589 adjudged, and decreed that the judgment appealed from be annulled and reversed; that the exception be overruled, and the case remanded to be proceeded in according to law, the appellees paying the costs of appeal.

On rehearing.

JEFFRIES
vs.
BELLEVILLE IRON-WORKS CO.

LABAUVE, *J.*

This case is on a rehearing.

On the 29th day of December, 1858, the defendant, being incorporated by an act of the legislature, tendered a cession of its property to its creditors, under the law of voluntary surrender by insolvent debtors. The judge accepted the same for the benefit of its creditors; ordered a meeting of said creditors to be convened before a notary public, on the 7th day of February, 1859, to deliberate on the affairs of said
590 company and to appoint a syndic; ordered a stay of all judicial proceedings against the property of said company, and appointed an attorney to represent the absent creditors.

The acknowledged debts of the company as per statement annexed to the petition for a surrender amounted to $199,145.72.

At the meeting held under the order of court all the creditors appearing, representing together an amount of debts of $184,376.21, voted to accept the surrender and for R. Wells, for syndic, and for a sale for cash of all the property and assets of the company.

The attorney for the absent creditors appeared at said meeting, and, reserving all rights to his constituents, declared that he had no objection to offer to what had been done or to the homologation of the same, and signed the deliberation.

Wells was duly confirmed and qualified as syndic, and on his application the movable property surrendered was ordered by the judge to be sold by the sheriff for cash.

591 On the 23d May, 1858, the syndic filed a provisional tableau of distribution in which he charges himself with a total amount of net receipts resulting from proceeds of sales of property, say 50,198 18

Out of which he deducts certain disbursements for expenses 15,519 83

Leaving for distribution a balance of $34,678 35

The privileged claims are put down at the sum of $60,737.65, added up together.

After order and publication of notice as required by law, this tableau of distribution was duly approved and homologated by the judge, so far as the same was not opposed on the 4th of June, 1859. All the oppositions which were between privileged creditors were withdrawn and dismissed in February, 1860, and the syndic, on a rule, was ordered to pay certain privileged creditors in pursuance of the judgment of homologation of the tableau of distribution, the sum of $85,625. This judgment was signed on the 25th of February, 1860.

592 The plaintiff, James Jeffries, a citizen of the State of Pennsylvania, filed this suit on the 18th of January, 1859, to annull the judgment of the 29th December, 1858, accepting the cession of property for the benefit of the creditors of said company and praying for a judgment against said property for $3,262.62.

After a long litigation a final judgment was rendered by the district court on the 23d March, 1860, annulling said order accepting said sur-

render, and the said company was ordered to pay said plaintiff the amount claimed in his petition. In the meantime, between the filing of this suit and the judgment rendered therein, the regular proceedings in insolvencies went on—meeting of creditors, appointment of syndic, order of sales, tableau of distribution of proceeds of sales, judgment of homologation, etc.

After having obtained judgment, plaintiff proceeded to execute the same on the property of said company and he garnisheed the Bank of America, Richard Wells, and others, and interrogatories,
593 filed 30th of April, were propounded to and answered by them.

The garnishees showed by their answers that they had nothing in their hands belonging to the company, and what they had belonged to the creditors of said company, represented by their syndic, R. Wells.

The answers of Richard Wells to the interrogatories propounded to to him are principally as follows:

"I have nothing in my possession or subject to my control belonging to the defendant, The Belleville Iron-Works Co., as far as I am advised and believe. As syndic of the creditors of said Belleville Iron-Works Company, I received possession of the assets set forth in the schedule filed on behalf of said company in the case now pending in this court, entitled Belleville Iron-Works Co. vs. Their Creditors, No. on the docket of said court, and to which schedule and to the tableau filed therein, respondent refers for greater certainty."

"No; except as above stated in my capacity of syndic, in
594 which capacity I hold funds in cash and notes as set forth in the tableau of distribution already referred to above and which has been duly homologated by the judgment of the court. The amounts so received appear on said tableau, but respondent does not now recollect the same, and cannot state the amount, without referring to the tableau, with entire precision. The amount is believed to have been about between four thousand and five thousand dollars."

A. Converse answered, "That he was indebted to Richard Wells in his capacity of syndic of the creditors of the said Belleville Iron-Works Co. On the 10th March, 1860, the lease of the property occupied by said company for the unexpired term thereof ending on the 31st of December, 1865, was sold at public sale by the sheriff, under the order of this court, and adjudicated to me at the rate of $1,000 per year, payable quarterly, at the period fixed by the original lease, say on the 1st January, April, July, and October of each and
595 every year. Nothing has yet been paid on account of the rent accruing under said purchase."

William G. Hughes, president of the Bank of America, answered, in substance:

That the bank had on deposit, in the name of R. Wells, syndic of said company, $11,867, but of that amount $11,000 had already been garnisheed by order of the United States circuit court in the case of Holdane & Co. vs. Belleville Iron-Works Co.

On the 18th June, 1860, the plaintiff took a rule on the garnishees to show cause why they should not pay, in solido, the amount of the judgment in his favor against said company, say $4,000, on the grounds, in substance, that the amount in their possession had been seized and made subject to said judgment; that the indebtedness of Converse amounts to said judgment; that the distribution of the funds by tableau, referred to by R. Wells, is illegal and void, and, if not so, is as
596 to plaintiff res inter alia acta; that said Wells is not entitled, as

against this plaintiff, to the commission claimed by him as provisional syndic; that the money in the Bank of America is still undisturbed and under the control of the court.

The garnishees excepted to this rule on the ground—

That, according to the showing of the actor in said rule, the proceedings cannot be sustained, as it attempts to annull or ignore the proceedings of the Belleville Iron-Works Co. vs. Its Creditors; and that said proceedings must be annulled by a regular suit brought for that purpose in the ordinary form of judicial proceedings.

This exception was sustained, and the rule dismissed. The plaintiff appealed.

We have decided, in our former opinion, that the judgment on 23d March, 1860, fully annulled in all its parts the order of the judge dated
29th December, 1858, accepting the cession of property of the
597 company for the benefit of its creditors. This suit was brought on the 18th January, 1859, even before the meeting of the creditors. We have granted a rehearing to afford an opportunity to examine to what extent the proceedings to which plaintiff was not a party would bind and affect him. While this suit was pending, and the syndic being a party therein, the proceedings were carried on as if there had been no suit to set aside the accepted cession of the property. We have re-examined the case, and bestowed a good deal of time and attention upon it, and we have come to the same conclusion as before, that the judgment rendered on the 23d March, 1860, fully annulled in all its parts, the order dated 29th of December, 1858, and allowed the creditors to proceed as if there had been no surrender.

We have also examined the question as to the legal effects of
598 the same judgment upon the anterior proceedings in the surrender, and we have concluded, after the most mature deliberation, that the judgment homologating tableau of distribution were not binding on plaintiff so as to prevent him from seizing money and effects yet in the hands of the so-called syndic or other garnishees, such money and effects being considered as the property of said company after the judgment setting aside the surrender, sublato condamento, cadit opus.

It is therefore ordered and decreed that our former judgment remain undisturbed.

Hearing and submission.—Extract from the minutes of 12th June, 1871.

SUMNER, HUGHES, & VALETTE *vs.* HOLDANE & Co. } No. 5177.

This cause was resumed, and, after hearing further evidence
599 and argument, the court took time to advise.

Decree.—Extract from the decree docket.

United States circuit court, fifth circuit, and district of Louisiana, April term, 1871.

NEW ORLEANS, *Wednesday, June* 14, 1871.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, associate justice of the Supreme Court.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. & AL. } No. 5177.

This cause having been submitted on bill, answer, and proofs, and, after argument of counsel, it is now ordered, adjudged, and decreed that the fund in controversy, viz, the sum of $11,867.07, deposited in the Bank of America to the credit of R. Wells, syndic of the creditors of the Belleville Iron-Works Company, and described in complainant's bill of complaint, is subject to the complainants' privilege as lessor, and
600 of right belonged to the complainants, and should be paid to them as lessors of the Belleville Iron-Works, in said bill mentioned.

And it appearing to the court that the said fund, under the order of this court, has been invested in the five-twenty bonds of the United States, bearing interest payable in gold, and that the said bonds are on deposit in the Louisiana National Bank of New Orleans, to abide the decree in the cause:

It is further ordered, adjudged, and decreed that said five-twenty bonds, amounting to $10,800, and resulting from the conversion of said fund, as well as any surplus or fraction thereof as may not have been so converted, be paid over and delivered to the complainants; that the defendants, Holdane & Co. and James Jeffries be, and they are hereby, perpetually enjoined from asserting any claim to said fund, and that they pay the costs of this suit.

Decree rendered June 14, 1871.

Decree signed June 15, 1871.

601 (Signed) JOSEPH P. BRADLEY,
Associate Justice Sup. Ct U. S.

Documents.—Filed June 14, 1871.

To the honorable, the judge of the United States circuit court for the district of Louisiana:

We beg to submit herewith statement of purchase of U. S. 5-20 bonds' made by us for acc. R. Wells, syndic, as per order of your honorable court, together with copy of receipt of A. Luria, cashier of "Louisiana National Bank," for bonds and currency, for safe-keeping.

Respectfully,
(Signed) SAM. SMITH & CO.

(Copy.)

Received, New Orleans, April 11, 1871, of Messrs. Samuel Smith & Co., ten thousand eight hundred dollars, in U. S. 5-20 bonds, and thirty-one $\frac{75}{100}$ dollars, in currency, for safe-keeping, for account of R. Wells, syndic of the estate the Belleville Iron-Works Company, as per statement of purchase rendered.

602 (Signed) A. LURIA, *Cashier.*

Purchase of United States 5-20 bonds for account of R. Wells, syndic of the estate of the Belleville Iron-Works Company, as per order of the United States circuit court for the district of Louisiana, in the case of Sumner, Hughes & Valette vs. Holdane & al., No. .

To 5,600 U. S. 5-20 bonds, July, 1865, @ 110	6,160 00
5,200 " " " May, 1862, @ 108	5,616 00
$\frac{1}{2}$ % commission on $11,867.07	59 33
Cash to balance	31 74
	11,867 07

CR.

June 30, 1870. By cash from Bank of America..... 11,867 07

NEW ORLEANS, *December* 30, 1870.

Consent.—Filed June 14, 1871.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. & AL.

Sam. Smith, having been ordered by the court to invest the funds in controversy in 5-20 bonds of the United States, it is agreed
603 that his report may be filed to-morrow or as soon as possible, to show the result of the investment, and the amount subject to the decree to be rendered herein, and that the figures may be inserted in a blank, to be left for that purpose, in the decree. But should an appeal with supersedeas, be taken by the defendants, or either of them, the investment aforesaid is to continue, and the defendants waive no right of appeal. And this agreement is signed without prejudice, and is non-effective without the concurrence of both the defendants.

N. O. 14th June, 1871.

(Signed) ROBERT MOTT,
For Holdane & Co.

(Signed) L. E. SIMONDS,
Solicitor for Jeffries.

Petition and order of appeal.—Filed June 23, 1871.

SUMNER, HUGHES, & VALETTE
vs.
HOLDANE & CO. & AL. } No. 5177.

604 To the honorable the circuit court of the United States for the fifth circuit, district of Louisiana. In chancery.

The petition of Holdane & Co. & of James Jeffries, defendants in the above-entitled cause, respectfully represents:

That in said cause in this honorable court a final judgment and decree has been rendered and signed against your petitioners and in favor of the plaintiffs, on the 15th day of June, A. D. 1871, in which judgment and decree there is manifest error, which will work irreparable injury to these petitioners unless relief be obtained by an appeal to the Supreme Court of the United States. Petitioners further show that the fund in dispute, and on which it has been decreed that plaintiffs have a privilege, viz, the sum of eleven thousand eight hundred and sixty-seven $\frac{07}{100}$
605 dollars, is under the control of this court, and had, by the order of this court, been invested in United States bonds, bearing interest payable in gold, and that said bonds are deposited in the Louisiana Bank of New Orleans, as appears from the record in this cause.

Wherefore petitioners pray that, considering said investment of the fund in dispute in bonds of the United States, bearing interest in gold, and the deposit of the same, subject to the order of court, in the Louisiana National Bank, and considering the 29th rule of the Supreme Court of the United States an appeal to operate as a supersedeas, be allowed

to said Supreme Court in favor of petitioners, upon giving bond for costs in an amount to be fixed by the court, with sufficient security, conditioned according to law, and that said appeal be returnable to the Supreme Court of the United States on the first Monday of December next, and that plaintiffs be duly cited to appear and answer said appeal, and for all other proper order in this behalf.

(Signed) L. E. SIMONDS,
606 *Att'y of Jeffries.*
(Signed) ROBERT MOTT,
Att'y of Holdane.

Order.

An appeal, to operate as a supersedeas, is allowed in this case, as prayed for, and according to law returnable to the Supreme Court of the United States on the first Monday of December, 1871, upon the petitioners' giving bond in the sum of six hundred dollars, with good and solvent security, conditioned as the law directs.

June 23, 1871.

(Signed) E. H. DURELL, *Judge.*

Bond for appeal.—Filed June 23, 1871.

Know all men by these presents that we, Holdane and Company and James Jeffries, as principals, and Robert Mott and L. E. Simonds, sureties, are held and firmly bound, jointly and severally, unto Sum-
607 ner, Hughes, and Valette, viz, R. B. Sumner, Francis Valette, and John Hughes and his wife, Josephine Vallette Hughes, in the sum of six hundred dollars, lawful money of the United States of America, to be paid to the said Sumner, Hughes, & Valette, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 23d day of June, in the year of our Lord eighteen hundred and seventy-one.

Whereas the said Holdane & Co. and James Jeffries have this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal in the case entitled Sumner,
608 Hughes, & Valette vs. Holdane & Co. & al., No. 5177 of the docket of said court:

Now, the condition of the above obligation is such, that we, the above bounden Holdane & Co., and James Jeffries, and Robert Mott, and L. E. Simonds, will well and truly pay to the said R. B. Sumner, Francis Valette, John Hughes, and Josephine Valette Hughes the defendants in said appeal, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) HOLDANE & CO., [L. S.]
By ROBERT MOTT,
Their Att'y at law.
(Signed) ROBERT MOTT. [L. S.]
(Signed) L. E. SIMONDS. [L. S.]
(Signed) JA'S JEFFRIES, [L. S.]
By L. E. SIMONDS, *Att'y.*

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.

609 UNITED STATES OF AMERICA:
Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States, for fifth circuit and district of Louisiana, do hereby certify that the foregoing 608 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Sumner, Hughes, & Valette vs. Holdane & Co. & al., No. 5177 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 16 day of October, A. D. 1871.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

[5-ct. int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 16th day of October, A. D. 1871.

E. H. DURELL, *Judge.*

[5-ct. int. rev. stamp, canceled.]

610 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to R. B. Sumner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Holdane & Company and James Jeffries are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

611 (Indorsed:) R. B. Sumner. United States circuit court. No. 5177. Sumner, Hughes, & Valette vs. Holdane & Co. & al. Citation.

Marshal's return.

Received, Jun' 24, 1871, by the U. S. marshal, and, on the 27th day of June, 1871, served a copy of the within citation of appeal on, R. B. Sumner, by delivering the same to John Crickard, his testamentary executor, at 27 Carondelet, in this city, said Sumner being dead.

New Orleans, July 12, 1871.

S. W. REED,
D'y Marshal.

On this 14th day of July, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me—

F. B. VINOT,
D'y Clk.

612 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to John Hughes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Holdane & Company and James Jeffries are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

613 (Indorsed:) John Hughes. United States circuit court. No. 5177. Sumner, Hughes, & Valette vs. Holdane & Co. & al. Citation of appeal.

Marshal's return.

Received, Jun' 24, 1871, by the U. S. marshal, and, on the 11th day of July, 1871, served a copy of the within citation of appeal on John Hughes at the corner Fourth & Baronne street, in this city.

New Orleans, July 12, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 14th day of July, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT, *D'y Clk.*

614 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Francis Valette, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Holdane & Company and James Jeffries are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said ap-

pellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 23 day of June, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

615 (Indorsed:) Francis Valette. United States circuit court. No. 5177. Sumner, Hughes, & Valette vs. Holdane & Co. & al. Citation of appeal.

Marshal's return.

Received, Jun' 24, 1871, by the U. S. marshal, and, on the 12th day of July, 1871, served a copy of the within citation of appeal on Francis Valette, personally, at his office in Algiers.

New Orleans, July 12, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 14th day of July, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT, *D'y Clk.*

616 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Josephine Valette Hughes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Holdane & Company and James Jeffries are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 23 day of June, in the year of our Lord, one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

617 (Indorsed:) Josephine Valette Hughes. United States circuit court. No. 5177. Sumner, Hughes, & Valette vs. Holdane & Co. & al. Citation of appeal.

Marshal's return.

Received, Jun' 24, 1871, by the U. S. marshal, and, on the 11th day of July, 1871, served a copy of the within citation of appeal on Mrs. Josephine Valette Hughes, personally, at the corner of Baronne & Fourth streets, in this city.

New Orleans, July 12, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 14th day of July, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn & subscribed before me.

F. B. VINOT, *D'y Clk.*

618 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to the Bank of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Holdane & Co. and James Jeffries are appellants, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 23d day of June, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] E. H. DURELL, *Judge.*

619 (Indorsed:) Bank of America. United States circuit court. No. 5177. Sumner, Hughes, & Valette vs. Holdane & Co. & al. Citation.

619 *Marshal's return.*

Received, Jun' 27, 1871, by the U. S. marshal, and, on the same day, month, and year, served a copy of this citation of appeal on the Bank of America, appellee, by delivering the same to A. M. Fortier, president of said bank, in person, at his office at said bank, corner of Exchange alley & Canal streets, in this city.

June 29, 1871.

S. W. REED,
D'y Marshal.

On this 11 day of July, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn to & subscribed before me.

F. B. VINOT, *D'y Clk.*

(Indorsement on cover:) No. 455. Holdane & Company and James Jeffries, appellant, vs. R. B. Sumner, Francis Valette, John Hughes, Josephine Valette Hughes, & The Bank of America. Louisiana C. C. U. S. Filed 1st December, 1871.